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STANDING COMMITTEE ON RESOURCES DEVELOPMENT

ANNUAL REPORT, WORKERS' COMPENSATION BOARD, 1986

THURSDAY, JUNE 2, 1988

Draft Transcript



STANDING COMMITTEE ON RESOURCES DEVELOPMENT

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From the Employers' Council on Workers' Compensation:

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Nixon, Ted; William M. Mercer Ltd.

James, Brian E.; Rubber Association of Canada

Andrew, Judith, Secretary; Canadian Federation of Independent Business

Doucet, Gerry, Past Chairman; Gloucester Organization Inc. and Retail Council
of Canada

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Thursday, June 2, 1988

The committee met at 3:46 p.m. in room 151.

ANNUAL REPORT, WORKERS' COMPENSATION BOARD, 1986
(continued)

Mr. Chairman: The standing committee on resources development will come to order. We are continuing our look into the annual report of the Workers' Compensation Board. We have heard from a large number of groups and today we have before us the Employers' Council on Workers' Compensation and Mr. Jim Yarrow is the chairman of the employers' council. I hope I have that right. Welcome to the committee, Mr. Yarrow. We would appreciate it if you would introduce your group and do your thing.

EMPLOYERS' COUNCIL ON WORKERS' COMPENSATION

Mr. Yarrow: The Employers' Council on Workers' Compensation appreciates the opportunity to appear before you. We are here to present from our perspective the employers' views regarding workers' compensation in Ontario. With me, this afternoon, I have to my immediate left, Judith Andrew, representing the Canadian Federation of Independent Business and to Judith's left is Brian James from the Rubber Association of Canada and then to my right, Gerry Doucet of the Gloucester Organization Inc. and representing the Retail Council of Canada. To his right is Mr. Ted Nixon of William M. Mercer Ltd.

Some of what is said here today will not be new but simply restated in 1988 terms. Much of what is said here today will in fact be new. This year, perhaps as never before, our council is able to deal with some very crucial, very topical subjects. Not only has employer concern heightened since we met with this committee in 1987, we are also aware that the Ministry of Labour is following up on its papers on pension reform, reinstatement and rehabilitation. Those events have galvanized our desire to be heard and understood before the fact in terms of re-establishing a fair and sustainable workers' compensation.

Before we do that, lest it be forgotten in the facts and figures to follow, let me once again state some general concerns about workers' compensation as seen by the employer community. Employers for the most part do not understand 86n decisions, the significant of the Villanucci leading case or the impact of removing the ceiling on compensation wage payouts or the fine points of permanent partial disability.

What they do understand, only too well, is that from a deficit of \$40 million in 1980 the system is \$6.2 billion in debt in 1986, the last year for which we have figures. They do understand the cost of it as the rise in assessment rates rise several times the rate of inflation, much of it to pay the interest on that deficit. They do understand that the system, with all its spending, is still unfair and demoralizing to workers causing some who require rehabilitation to wait up to 15 months and more just to get into the system. They do understand that the cost of that time interval is added right on to

Mr. Yarrow

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the employer assessment. They do understand that the word "accident" has lost all meaning in adjudicating claims both by the Workers' Compensation Board and the Workers' Compensation Appeals Tribunal on appeals.

In short, they do understand that workers' compensation, in business terms, is and has been for some time out of control. They do understand that changes must occur or like so many dominoes, businesses, particularly small businesses, will start to go under, too.

I wish I was exaggerating, but sadly, I am not.

Now to the specifics, the employers' council recognizing the need to deal with possible legislative changes to the Workers' Compensation Act this year hired the highly respected firm of William M. Mercer to prepare a short presentation on what we, the employer community, feel are the issues the government and the Workers' Compensation Board ought to be addressing before they make any further changes to the act.

~~Mr. Ted Miron will be available to present and later when we complete~~

R-1550-1 follows

MS
(Mr. Yarrow)

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~~the issues the government and the Workers' Compensation Board ought to be addressing before they make any further changes in the act~~

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Mr. Ted Nixon will make this presentation and later, when we complete the remainder of our presentation, we are naturally prepared to answer questions.

T.
Mr. Nixon: Maybe I will just say, first of all, that Mercer has worked with the employers' council for about five years now and primarily on issues of assessment rates and assisting with the introduction of experienced rating and appearing before this committee from time to time, as well, but primarily on finance issues.

This go-around, what they said to us is: "Ted, we are always pilloried for talking about rising costs. It is natural for us as employers to talk about dramatically increased costs in the system because, in fact, they have gone up dramatically. But every time we sit among ourselves and talk about it, it is not simply the absolute dollar increase in costs that bothers us because everybody knows there is inflation, there has been some legislative changes and all the rest of that kind of thing, but you know from talking with us that there is a certain aspect of the rising costs that really bothers us. We enunciate it in words. Do you think you could try to capture that in terms of dollars for us, because we feel it would give us better credibility when we talk about rising costs."

So that was the challenge this time in terms of the study we did for them beginning in April. Now any discussion about finances and costs in workers' compensation always ends up, starting really, by looking at accident frequency rates. In terms of accident frequency rates, lost time accidents, one should be fairly clear what we mean by that.

We are talking about lost time accident. We are not talking about health care claims here. We are talking about accidents for which some compensation has been paid. Technically, they start out as temporary compensation claims and we are pretty familiar with those.

So the accident rate or the frequency rate is the number of accidents per 100 workers each year and that accident rate really has remained very stable between five per cent and six per cent. In other words, five to six accidents per 100 workers when viewed over the last 10 years. We have used a 10-year time frame for a lot of this work, going from 1976 through to the end of 1986.

You can see that it has never really gone much below five, at all, and it has never really gone much above six. There was a bit of dip here during the recessionary period and typically what I think most people see there is there is a younger, less experienced worker was getting laid off or there was no real new hiring of the younger, less experienced workers and the older, more experienced workers tend to have fewer accidents.

As you come out of the recession and there is some growth in the workforce, two things happened. Some younger, inexperienced workers get back in the workplace tending to have a few accidents but a subtle change in the

Mr. Nixon

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definition of accident and most of us are starting to become rather familiar with this, that there is more things being accepted under the definition of an accident than was previously the case; in any event, not much dramatic change in frequency rate over 10 years.

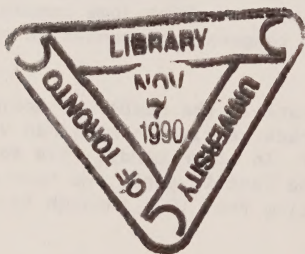
A couple of other fairly important points are that the total number of incidents, in absolute terms, the blue bar, number of incidents, which means health care only claims plus lost time accidents. You see this right in the board's annual report, right on the front page, the statistical page, right up at the top. In the range of 430,000 to 440,000 incidents per year being reported and that has not changed much at all, in absolute terms, over 10 years. It is still in the 430,000 to 440,000 range.

There has been about a 28 per cent growth in the workforce over that period, but really not much change at all in absolute number of incidents being reported. You can say: "Well, that sounds kind of funny because you just told that the accident rate per hundred of workers stayed about the same. So if the workforce went up, there had to be more lost time accidents in absolute terms over 10 years," and yes, there is.

What has happened is that the health care only claims, the absolute number of them, has fallen over 10 years and the two have about balanced off and you have about the same absolute number in total.

Dollars of benefits being paid out: In 1976, about \$325 million were paid out for benefits. In 1986, after we get rid of inflation which was about 100 per cent over the 10-year period, there is \$563 million of benefits being paid out.

R-1555-1 follows



(Mr. Nixon)

~~... paid out for benefits. In 1986 after we got rid of inflation, which was about 100 per cent over the 10 year period, there is \$568 million of benefits being paid out. In fact I think if we probably look in the 1986 report there is something over \$1 billion of benefits being paid out.~~

It was about 100 per cent inflation over the 10 years. You deflate it, so we can talk in constant dollar terms and we have still got about a 70 per cent increase in benefits paid out. So, we have seen we do not have any real increase in the number of incidents. We got a constant accident rate and a dramatic increase in the dollars paid out over 10 years. So the question is have we really seen a dramatic shift in what this compensation system is doing? Is it dramatically different in shape and size and configuration than it was 10 years ago?

In fact these two pie charts will show that it is not. It is still a compensation system that pays out about 50 to 55 per cent of the total benefit payments for short term claims, about 28 to 32 per cent—the white section of the pie here—for pensions, lifetime pensions, disability and survivor pensions, and something in the range of 13 to 15 per cent for health care claims. A small decrease in the health care component—as I just finished saying, the number of health care claims went down. Fairly significant inflation over the 10 years. All right?

So we have not got a real big change here. Perhaps the only real significant change is that the dollars paid out for lifetime pensions and survivor pensions have risen from about 28 to 32 per cent of the pie. So the system has really still got a similar configuration than before. Well, OK, why do we have this big real dollar increase, that I just talked about, in benefits paid out, after you get rid of inflation?

So, we looked more closely and said, "let's look at both temporary compensation and disability and survivor pensions and see what has happened over 10 years to them." In 1986, for short-term temporary compensation payments some \$587 million paid out in total. In 1976 there was about \$170 million or \$180 million paid out. Now if nothing else had happened, you would expect to have about the same dollars paid out in 1986 for temporary compensation. We have seen we had a relatively level accident rate. If you had had no growth in the work force and no inflation, you would expect to see about this amount or \$170 million or \$180 million paid out in 1986. Clearly that did not happen, so how do we account for the dramatically higher number in absolute terms?

While there was some growth in the work force—the white pie here—about a 28 per cent growth in the work force over the 10 year period. So if you have got the same accident rate per hundred you are simply going to pay out more dollars, because you have more loss time accidents, more temporary comp claims. I said there was about 100 per cent inflation over 10 years. Well, in fact if you add the orange pie here, the section of the pie, which was the 1976 level, add some work force increase causing some payments, that puts this up to about 39 per cent. Double it for inflation and we have accounted for a fair amount of the \$587 million.

We had some legislative changes, 1985 in particular, and the legislative change that affected the short term temporary compensation claims perhaps the

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most was the growth in the earnings ceiling. The earnings ceiling growth has been about seven per cent greater over the 10 year period than inflation and average wages and that accounts for a small part of the increase here. So you are left with then about 15 1/2 per cent of the pie, or 15 1/2 per cent of \$587 million, which is about \$92 million in 1986. It would be a lesser amount in earlier years but the same thing could be laid out.

There is about \$92 million that is really unexplained and the employers said to me: "That's what we're upset about. That's what we get concerned about and that's really what we complain about, Ted. We accept that there is a level of compensation and the system pays. Yes, we have to strive to get the accident rate down and we do. We accept there is going to be inflation. We accept there is going to be a growth in the work force. We've argued about legislative changes but that's the will of the people and the legislators and once they are in we've got to live it. But this we have trouble with. We can't pin it down. We can't find in the Act why those dollars are being paid out. We can't find anywhere that there was a legislative intent to have those dollars paid out."

If we looked at disability and survivor pensions there is a similar kind of result here. I can walk through this similarly and say that whereas...

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Follow



(Mr. T. Nixon)

~~legislative intent to have those dollars paid out. If we look at disability and survivor pensions, there is a similar kind of result here. I can walk through this similarly, whereas in 1986 there are \$356 million paid out, in 1976 dollars at the 1976 level, you would have had only about 18.3 per cent of that amount paid out, which is some \$60 million I guess.~~

1600

With disability pensions you simply have a growth in the number of recipients of disability pensions for a long period of time, because disability pensions are added at the rate of about five per cent to nine per cent of the injured workers get disability pensions. The only way that they come off is by death. You are simply going to grow that cohort of disability pensioners for quite a number of years before it stabilizes, unlike temporary compensation where they churn over every two or three years and you reach a fairly mature level much more quickly.

Growth in the workforce does not account for much because only five per cent of the workers get injured to start with and then only eight or nine per cent of those ever get disability pensions. The real growth here is just from the new disability pensioners being added. There are about 100 per cent inflation again, which if you added this and this together and doubled it, it is close to that.

There were some legislative changes, again in this area, the legislative changes that had a more significant impact in addition to the growth in the earnings ceiling, was the change in the survivor benefit. It affectively doubled the value of the survivor benefit.

We are left then with about 13.5 per cent of the \$356 million, so called unexplained if you like, or about \$48 million, for a total of about \$140 million in 1986, that is difficult to pin down as to why that is being paid.

I might add the Peat Marwick study that was commissioned by the Workers' Compensation Board earlier this year, has similar numbers when you get to the end of their study. They end up identifying a lot of the reasons that can be statistically labelled as reasons for increase in payments and do end up with a similar type of amount that, as they said, seems to be the result of internal procedures.

The employer said, "Now look Ted, having done all that, let's not be naive and suggest that we as employers cannot think of any reason in the world why those dollars would have been paid out." That is being really quite naive, because we can identify it, even though it may not have been a legislative attempt to identify why some of those dollars were paid out.

In fact, what we know is that there has been a very steep increase in the average duration that a worker stays on temporary compensation claim. It is taking about 12 days longer on average to return injured workers to their jobs. Certainly there is a dramatic increase here during the recessionary period. Arguable there were not jobs for the worker to go back to in many cases, whether that is the job of Workers' Compensation is another subject.

Certainly, after the recession and through into the growth period again, we are not seeing that duration of claim come back down to earlier levels. We are on an upward climb and it does not appear that there is any downturn in

Mr. T. Nixon

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sight.

If we look at disability pensions, as opposed to the short-term claims, two things can be noticed. First of all, our two graphs on this overhead, the top graph talks about the percentage impairment, or the degree of severity of a disability pension awarded. Typically we are familiar with disability pensions getting awarded at 15 or 20 per cent of the maximum level of disability pension awarded. Whereas 10 years ago the average level of disability pension awarded was at about the 20 per cent level, it has now fallen down to about the 16 per cent or 17 per cent level. We are seeing that disability pensions are being awarded on average, for less serious situations.

On the other hand, there has been a fairly significant increase in the percentage of injured workers who do get awarded lifetime disability pensions. Whereas it used to be in the five per cent range down here, we are now up in the 7.5 per cent, eight per cent, close to nine per cent of injured workers are getting awarded lifetime disability pensions.

If we put these two together, what it says is there is a large absolute increase in the number of injured workers that are getting very small disability pensions awarded to them.

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 (Mr. T. Nixon)

~~Now if you put these two together, what it says is that there is a large absolute increase in the number of injured workers that are getting very small disability pensions awarded to them.~~

If one looks in the annual report and looks at the 10 per cent or under where there is a degree of impairment, there is a large increase in the number of those people getting those small pensions, which prompts the question of whether that is best way to spend the money, because simply you cannot live on a 10 per cent pension, that is for sure.

Now, having offered those as potential reasons for the unexplained portions of the payment, so to speak, where the rubber really hits the road for employers then and the employer community said, "Look, where it really hits us as employers is if you total up the assessments that we pay and divide them by the number of injuries so that we come up with a cost per injury and deflate it. Take out inflation because we recognize that there will be inflation. If you take out inflation and simply divide the total assessments we are paying, by the number of injuries, the lost time injuries, it has risen by about 38 per cent over the 10-year period.

"If we do the same kind of thing and relate it to the number of active workers we have. In other words, take our costs or assessments and divide them by workers." Although the graph looks a little flatter here, it is just because it is compressed. "There is about a 40 per cent increase again over the 10-year period that in real terms, get inflation out of that, about a 40 per cent increase in our costs."

Now, as if that was not enough, the fact of the matter is, is that is going nowhere towards paying the total costs of the system. We know, and I am sure you do very well, that what has happened over 10 years is despite those real increases in assessment rates, and of course the absolute increases are much greater than that, despite those increases, the unfunded liability to the end of 1986 at least, has grown about fivefold over that period of time. In fact, more than that, many times that, to about \$6.2 billion. The system really still has a long way to go to be properly funded.

That is the end of one set of work that we did for the employer community on the costs, about \$140 million in 1986 that would be difficult to explain or identify in the act as to why that has not been paid out. Forty per cent increases in assessment rates and still a \$6.2 billion unfunded liability at the end of 1986. Jim, I am going to stop there and go back to you.

Mr. Yarrow: If you would just put up the mission statement. At this time it was at the bottom of the list I think. I would like to interject, for the committee's benefit, to remind you that the employer's council on workers' compensation, is made up of 20 business associations, six technical experts and four corporations at this time. They represent, through associations, and the individual corporations, about 50,000 Ontario companies and about a million workers. So that we have a pretty good base as far as our representation is concerned.

Those companies and those employers, through us, have developed three short points in so far as our mission statement is concerned. To foster and promote better treatment, rehabilitation and reinstatement of injured workers through the workers' compensation program. To carry out necessary research and to consult with other interested parties to make the program as effective as

Mr. Yarrow

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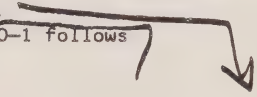
possible. And, to ensure that the workers' compensation program is sustainable from an economic point of view over time.

The slide presentation has illustrated serious problems with the workers' compensation system. Sustainability is a real and an immediate concern. As demonstrated by the mission statement, the ECWC is committed to a fair, equitable and sustainable workers' compensation system. The workers' compensation system simply is not delivering these objectives.

A worker injured in the course of his employment, should receive income maintenance, the highest quality medical care and professional rehabilitation assistance to return to the labour force. Anything less than this is simply not acceptable.

We are witness to a system that is not only becoming more financially unsound year by year, but workers simply are not being cared for. Delay upon delay, ineffective rehabilitation, and an increasingly complex appeals process, that compromises the basic principle of accessibility, are the present realities. In recent years, service levels to employers and workers, have

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(Mr. Yarrow)

~~... and an increasingly complex appeals process that compromised the basic principle of accessibility, and the present solution. In recent years, service levels to employers and workers have been decreasing, despite the promises by the administrator of the process.~~

1610

The Employers' Council on Workers' Compensation, though, has not come before this committee to only launch criticisms, but to provide some suggestions for thoughtful solutions. Our bottom line requirements are: swift, fair and efficient benefit administration; adherence to the principles of the act; better treatment, rehabilitation and reinstatement of injured workers; and very important as far as we are concerned, a sustainable and affordable system.

We realize there is no quick fix to the multitude of WCB problems. Part of the long term solution will be shown to be found in sensitive and efficient administration, guided by responsible legislation in the following areas: reinstatement rights and vocational rehabilitation; the pension system; the Workers' Compensation Appeals Tribunal.

So that I am not doing all the talking, I will turn the next section over to Brian James regarding reinstatement rights and vocational rehabilitation.

Mr. James: The Employers' Council believes that a satisfactory and effective model instituting limited reinstatement rights can be developed. However, a statutory right of reinstatement is clearly secondary to many other practical considerations. The principle of quick and effective reinstatement involves not only the cooperation of the employer, but also of the employee, his or her union, and the Workers' Compensation Board.

The Employers' Council strongly supports effective vocational rehabilitation and is of the view that in addition to safety and prevention, this is a prime priority for labour and management, the medical profession and the Workers' Compensation Board.

A reinstatement policy should not focus solely on a requirement of employers to take back injured employees, but should also recognize all of the existing roadblocks to effective reinstatement.

The current program leads injured employees past the point where despair and hopelessness become major problems. At the time of the injury, the expectation must be positive that not only will the employee recover, but a program will be implemented which will ensure reinstatement as soon as possible.

This is the only viable option to a system that now sees far too many injured employees becoming fully dependent upon their Workers' Compensation Board pensions, as they become convinced that they are not, or will not again become, employable.

In summary, the Employers' Council advocates: (1) Early referral and intervention; (2) Integration of services through an interdisciplinary team

Mr. James

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approach; (3) Early identification of objectives and goals; (4) Enhanced communications; (5) Establishment of practical guidelines; (6) More efficient utilization of present facilities and community resources; (7) Greater effort in treatment monitoring; and (8) Establishment of a vocational rehabilitation timetable.

The Council is well aware of recent initiatives by the Board in this area, and is supportive of its recently announced vocational rehabilitation strategy.

The Council overall, is encouraged by the renewed emphasis on rehabilitation. The significant increase over the last decade of length of time on claim has been a prime concern of the employer community. We accept with some optimism that an enhanced effort on rehabilitation will reduce the overall persistency rate.

The emphasis clearly must be on a return to the pre-injury job, wherever possible, with the secondary objective being a return to an alternative position. A sense of partnership will assist in developing a higher level of responsibility and accountability for all parties, the employer, the worker, the treating physician and the Board.

One of the clearest deficiencies in the current vocational rehabilitation model is the absence of specific goals and timetables. We are pleased to see that the board has embraced this concept in its strategy.

The Council has observed with interest and quiet support, the extensive reorganization at the Board. We expect that a new delivery model is the key to the solution, providing that it enhances the ability to deliver effective rehabilitation. The test for success will be the measurement of length of time on claim.

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R-1615 to follow

~~...the ability to deliver effective rehabilitation. The key to success will be the measurement of length of time on leave.~~

Mr. James

We encourage this committee to lend its full support to the board's strategy, but the entire system must adjust its focus from pure benefit administration to a cohesive interaction of effort geared to return workers to their jobs.

Now I will turn the pension reform section over to Judith Andrew.

Mrs. Andres: Without question, pension reform is one of the major issues that requires immediate attention. The ECWC continues to be frustrated by a pension system that, as a matter of routine process, provides workers with lucrative pensions, even though they have returned to their preaccident job with no wage loss. At the same time, some severely disabled workers, who cannot return to their preaccident employment, receive compensation far below their actual loss. This inequity simply can no longer be tolerated.

The ECWC supports in principle revision of the permanent-partial disability benefits system to equitably identify and administer separate award categories for economic and noneconomic loss. What we do not support is a benefit enrichment hidden under the guise of pension reform. A dual award pension system must be predicated on the firm principle of benefit neutrality. Reforms should be redistributive.

We support compensation for wage loss caused by the accident with reassessment at regular intervals, coupled with the use of deemed wages controlled by a statutory formula. Motivation for a worker and employer to improve a worker's earning potential must not be sacrificed. If this was the case, the basic theme of wage loss pensions is defeated.

For noneconomic loss, the ECWC advocates a modest lump sum award administered in accordance with a disability rating schedule with no opportunity for reassessment. Lump sums should not be based on actual, potential or average earnings, but rather on a new schedule developed through consultation with other compensation and insurance experts. Given that the WCB's purpose was to cover pecuniary losses on a no-fault basis for all work-related injuries, employers have conceded a major point in agreeing to compensation, albeit modest, for non economic losses. Effective administration design must also provide a rational transition. The temptation to provide the best of all worlds to existing pensioners, must be tempered with economic realities.

Now I will ask Gerry Doucet to deal with the Workers' Compensation Appeals Tribunal.

Mr. Doucet: I will be rather quick in referring to the section on the Workers' Compensation Appeals Tribunal, but before I do that, I just wish to bring the committee's attention to page 22 of the 1986 annual report of the Workers' Compensation Board, that is before you, where the actuaries of the board make the point that certain decisions rendered by the Workers' Compensation Appeals Tribunal may have the effect of altering the adjudication of Workers' Compensation claims. Such changes in the adjudication of claims could result in a significant increase in the present value of future payments under section 1 on account of accidents which occurred in past years, and this

Mr. Doncet

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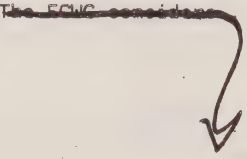
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is the salient point, in my view, coming from these actuaires. It is not possible to quantify at this time potential increase in the present value of future payments because of the uncertain future resolution of these decisions and the limited amount of available data.

The employers' council continues to be very concerned with the development since the establishment of the Workers' Compensation Appeals Tribunal, now two years later from that report on the WCB. Not only are we now faced with a legalistic, complex appeals process that is beyond the comprehension of most who have traditionally appeared in appeal hearings, but we are seeing a system bogged down by its own bureaucracy. If I may say so, having appeared before that body and been involved in some of the decisions that have emanated from it as past chairman of the employers' council, I ask myself, and I even ask you, whether that is in fact what we had intended by the creation of this body several years ago. I think the answer to that question bears the attention of this committee.

The delays presently being experienced are no longer tolerable. Workers and employers are being poorly served by a cumbersome process that takes years to complete. A discussion of the tribunal is not possible without a review of the unique relationship between the board and WCAT. From the outset the ECWC has expressed concern with the powers that the tribunal has assumed in the area of policy development. The ECWC considers

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(Mr. Doucet)

~~... policy development. The ECWC considers it improper for the WCAT to routinely issue decisions that conflict with board policy.~~

1620

First, the board is clearly provided with the jurisdictional responsibility to establish policy. Second, and perhaps more important, the WCAT approach destabilizes the system, potentially creating an unknown liability and forcing workers and employers into a permanent state of uncertainty. I think the actuaries certainly focused on the cost side, but the other side; the confidence in the system and the reliability of the system, I think is what we also question. At this time, for example, it is unknown in the province of Ontario as to what even constitutes a compensable accident. Certainly it is preferable for the representative board of directors of the WCB to be the authors of the policy book. The tribunal must review policy in an adjudicative vacuum, case by case, sheltered from the competing interests within the legislation. The board, on the other hand, is responsible for the entire act, and must formulate policy with an appreciation of its overall impact on the system.

Policy development through adjudication creates a legalistic adversarial process not wanted by anyone. Those chronically dissatisfied with the WCB will turn to the WCAT as a matter of routine, relegating the board to a role of simple administrator with no real adjudicative authority. Policy issues must be pursued aggressively, but with an appreciation of the total system impact. Dialogue on policy should be directed through the board's executive group, the board of directors and through political and legislative channels. This is the effective process establishing responsible position development for all sectors in a controlled consultative environment. This is the preferred approach of the ECWC, and I believe the worker community as well.

It is recognized that the tribunal plays a very important role in the policy development process. After all, it is before the WCAT that the final test of the policy occurs. Surely, though, there is a clear operational purpose for the chairman of WCAT being an ex officio member of the WCB board of directors. This was designed, it would seem, to keep the tribunal in step with the board but not without an opportunity to influence and provide input.

If the tribunal continues its present approach, we will see the development of two distinct workers' compensation systems running in parallel to each other in the province, and it is not a system, if I may add, that other provinces, having looked at it, find particularly desirable. The tribunal was not created to supplant the WCB, but to restore and maintain integrity in the adjudicative process. The legislation must be revised to more clearly define the relationship. If we were asked the question, who should decide policy, our answer very clearly would be the board of the Workers' Compensation Board, and we urge this committee to recommend a legislative clarification of the relationship between the board and the tribunal to achieve that.

The recommendations that the ECWC brought to this committee last year, are equally valid today. The role of the tribunal counsel office should be reviewed. There is not a need for legal input in all cases. Case descriptions should be eliminated except in the most extraordinary circumstances. Finally,

unless post-hearing investigations are called for, the tribunal should release its decision within 30 days of the hearing, a direction that other provinces are now taking, building in a time limit.

Mr. Yarrow: Last year the council commented that the workers' compensation system was at a crossroads. This year I do not think we are understating it to suggest it is in a state of crisis. The problems, though, are not without their solutions and the response should not be one of panic.

We will pause now, and we are prepared to receive your questions on this part of our presentation. In addition, we have some additional slides dealing with the cost of potential changes to the system, which we can show the committee now or following some of those questions. We are at your discretion at this point.

Mr. Chairman: I am sorry, I was reading something else and missed your concluding remarks.

Mr. Yarrow: Caught you. We have some additional slides portraying some of the costs of what we feel might be some of the recommendations coming down from the Ministry of Labour, and if you wish to see them at this time, we can do that, or we can take some questions and then present them, whichever you wish to do.

Mr. Chairman: I would just as soon see them now. I do not know about the rest of the committee. Then we can get the machine out of the room of Mrs. Marland.

1625-1 follows



~~We can do that or we can take some questions and then present them, which
you wish to do.~~

Mr. Chairman: I would just as soon see them now. I do not know about
the rest of them admitted. Is that agreeable?

Mr. T. Nixon: The second part of the work that ??Mercer's did for the
??employers' council at this time was to try to make an attempt at determining
what might be the costs of some rumoured changes that the Liberal government
might be planning in the Ministry of Labour for a legislative agenda.

The three particular items that they asked us to have a look at, which
might be able to be quantifiable, were, first, the wage loss system if it was
installed to replace the existing arrangement of paying lifetime disability
pensions. Second, what would the impact be of the removal of the earnings
ceiling. Third, what would be the cost if employers were required to continue
traditional group insurance benefit coverages during a period when injured
workers were receiving disability compensation from the board, say for up to
two years.

At this point, we did this work and we did not really have the knowledge
at all of what the Ministry of Labour was contemplating, so I really just
speculated here and went back to the Weiler reports where Weiler identified
about three different approaches. There was an approach that was being
proposed by the New Democratic Party, there was an approach being proposed by
the Liberal Party and then there was Weiler's proposal. There never did seem
to be a specific Conservative proposal in his report.

If I take the so-called cheapest, if you like, of the three that were in
Weiler's report—

Mr. Chairman: Was that the New Democratic one?

Mr. T. Nixon: No, it certainly was not. You can get that on the record.

Weiler's own proposal was referred to as a dual award approach. It was
intended to be redistributive rather than duplicative in nature. If one looks
at what he contemplated, at this point you then have to say, "What degree of
wage loss are we likely to experience?" Nobody knows that. The Workes'
Compensation Board does not have any statistics or any data that will tell
them that.

If one looks at other provinces, you might get some idea, but the
definition of an accident in the first place can vary from one province to
another. Using other provinces' data as a guide to what a wage loss system
would cost in Ontario is a very dangerous thing to do.

In fact, by me putting a number up here of \$100 million to \$200 million
a year more, I think I can bet my house on it that it is going to cost that
much more. But it could be nothing more if it is decided that the wage loss
system was definitely going to be structured to cost nothing more. It does not
mean that you come up with a structure and some airy-fairy assumptions that
you will make it cost less, but you could tighten it up. You could have a very
small element of impairment award under Weiler's approach. You could have very
strict definitions of what is deemed to be wage loss.

Mr. T. Nixon

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On the other hand, the wage loss system, if it is not the dual award approach, if it is the New Democratic Party's approach or the Liberal Party's old approach back at that time, might cost \$500 million a year more. It might be \$1 billion a year more. Nobody knows. Knowing the province of Ontario and the way earlier legislative recommendations have ended up being installed, practised and operated, I would be almost prepared to bet my house that it is going to cost \$100 million to \$200 million a year more.

You have to look at dealing with future claims as well as existing claims. I have a small house. You have to look at existing lifetime pensions and what is going to be done with them under this kind of system.

At this point, I might note that even for the elected representatives of the province, some of their best intentions in legislative words often can get altered at the last moment and the board's own policy can develop to defeat often what were your intentions. For instance, simple use of the words whether wage loss system applied to new accidents or new awards. This happened in 1985. Nobody thought about that. There was a subtle change when the words went in the act and it has a very big difference.

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ing T.
(Mr. Nixon)

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~~whether wage loss system applied to new accidents or new awards. This happened in 1985. Nobody thought about that. There was a subtle change when the word went in the act and it has a very big difference.~~

1630

So this area of trying to cost wage loss is fraught with difficulty. If somebody says it is not going to cost anything, you really need to look very deeply at it.

Removal of the earnings ceiling. At the moment, there is perhaps a four per cent differential between average wages in the province and average wages that get used for workers' compensation. The assessments in the system are something like over \$2 billion this year, so it is pretty easy to see about an \$85-million increase in the system, or somewhere in that range, if the earnings ceiling was removed.

There are some serious and subtle underlying implications of removing the earnings ceiling. It sounds very simple and a very facile thing to do. There are some tax complications that result for individuals. It is quite conceivable that if the earnings ceiling is removed, injured workers will take home more earnings than they did prior to being disabled. It is quite simple to do an illustration that shows that if somebody earns \$50,000 and is on workers' compensation, getting temporary disability for six months of the year, their net take-home pay for that year will be more than 100 per cent of their predisability net take-home pay.

Mr. Chairman: One of the members had a question of clarification. I do not think we want to get into the question and answer section now. Was it for clarification, Mr. Smith?

Mr. Smith: What you were saying about a word being changed or wording being changed, in your opinion, who would make those changes at the last moment without the elected people, I suppose, realizing? Who in your opinion would make those changes?

Mr. Nixon: It could be the people who draft the legislation. I am quite sure that a lot of the legislation is dealt with in committee and there can be subtle changes in the wording, I would think, at the last minute. The combination of that and watching policy develop out of the board.

One would think in the wage loss system that you would really almost need to sit down with people in the Workers' Compensation Board and say, "If the words were written like this in the act, how would you develop policy to implement a wage loss system?" Then stand and look at what their policy would be and say, "Is that in tune with what we intended"—the working committees and Legislature—"Is that the way we intended to have it come out?"

Mr. Chairman: I think the point Mr. Smith is making is that when it comes to a committee, the legislators, because we are not legislative draftspeople and a lot of us are not lawyers, we assume that has already been done by the time the bill gets to a committee. That may be a heroic assumption, but I think that is an assumption most members make.

Mr. Nixon: I think it does not happen.

With respect to the continuation of employee benefit coverage, here I am surmising that what they might intend would be that something like the Ontario health insurance plan and group insurance and pension coverage, the employer contributions that are made towards those benefits for employees would be continued for perhaps two years while compensation payments are being received by injured workers. There is no suggestion here in my assumption that employers would be forced to create benefit programs, but if they have them in place and do contribute towards them, then those contributions and the coverage itself would continue for this period of time.

Of course, many employers already continue benefit coverage while employees are receiving compensation. In many cases, it is negotiated as part of a union agreement.

That might cost \$50 million to \$65 million a year, somewhere in that range. It is pretty easy to see that if these types of changes were proposed and implemented, the increase in cost to the system might be anywhere in the range of \$235 million to \$350 million a year more than it now is. It could be more, it could be less, but that is not a bad ball park figure, without trying to build a spaceship to cost the whole thing.

I think I am going to stop at that point and let you carry on, Jim.

Mr. Yarrow: Do you want to put the conclusion slide up?

In order to be as concise as we can, these have been pretty much worked over for many hours, what you are going to see on his slide and one other.

Our conclusions basically then are that injured workers are not being treated and rehabilitated effectively through WCB programs. Here again, with these, I realize I am probably not telling you anything you do not know.

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~~...justified in one other~~

~~Our conclusion is basically, that injured workers are not being treated and rehabilitated effectively through Workers' Compensation Board programs here again with these I realize that I am probably not telling you anything you do not already know, but we want to; for purposes of the public and ourselves so that we both understand the situation, we have to say it—the costs to employers have escalated dramatically, even though frequency remained stable and the degree of physical impairment has declined; and the worker's compensation program is unsustainable at current trends and costs, the unfunded liability and the procedures.~~

Maybe if you could put up the final one, ?? . Again, on a positive note, we do have recommendations. Again, after many hours and pages of them, we came down to a few basic words that can be easily understood. (1) Major changes in the workers' compensation program should only follow adequate consultations with workers and employers. We find that we are constantly being reactive instead of proactive because things are coming down the pike that we do not know about enough ahead of time to have input into.

We feel that documented impact studies on each proposal should be completed and made public. As businessmen, it completely floors us to understand that something can be built and no price tag put on it, and no ??impact. We feel that perhaps to achieve parts of the previous two, a standing committee should review all economic and social implications of the proposals. In and of themselves, they may appear very innocuous, but carrying them out is a very much more complicated process.

Again, I would say that we are prepared now to answer questions. We can do it a number of ways. If, as people were writing their questions, they want to direct them to the individuals who are sitting up here, for my part I can field them and pass them on; if you would like, or you can speak directly to them on a general nature. If you get down to the grass roots and want to talk about employers, I happen to be a small employer and I would be glad to speak from that perspective. But as far as facts and figures and the other parts that the members of our group have spoken to, you may address them.

Mr. Chairman: A number of members have indicated an interest. I must say that it is an appropriate comment you are making about trying to anticipate future costs. There is a good possibility that this committee will be looking at a new compensation act in the next couple of weeks that will be introduced and sent out to this committee. It is a strong possibility. If that is the case, then we would be holding hearings and taking a close look at that bill in the next three or four months. It is appropriate that you are thinking ahead in anticipation of changes in the act. We have not seen them. At least I have not seen them.

Mr. Yarrow: Maybe we can in fact be proactive in certain areas than just reactive.

Mr. Chairman: ?? being proactive. I did want to ask you about one thing perhaps just to get the discussion going. You talk about workers being off work 12 days longer than they were roughly 10 years ago. You talk about an increase in the permanent pensions for workers. You talk about the cost per injury being up 36 per cent, with inflation removed. I am wondering whether

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all of this makes sense in terms of if the disability pensions are higher rating now and the cost per injury is up 36 per cent, why would workers not be staying off work longer?

Mrs. Andrew: Disability pensions are on average a lower rating. ?? that point.

Mr. Chairman: I thought you said the increase in injured workers getting permanent pensions. Were you talking about the number of injured workers, then?

Mrs. Andrew: There is a larger award rate. It has gone up from about five per cent right up to over nine per cent. That was also illustrated in Weiler's report.

Mr. Chairman: Right, but that does not—

Mrs. Andrews: So far more workers are getting very small pensions, indicating a minor type of permanent injury.

Mr. Chairman: OK. I am still confused about it

Mr. T. Nixon: Actually, Judith has it right. The graph that is in the ??piece that has two graphs on it shows that the severity, if you like, of disability pensions—in other words, the level of pension being awarded—has fallen from about 20 per cent down to 15 or 16 per cent.

Mr. Chairman: I see.

Mr. T. Nixon: A lot more injured workers, in other words, a lot more workers who are getting temporary compensation payments, are in fact now getting the lifetime pensions. Up to about nine per cent of injured workers get lifetime pensions.

~~Mr. Chairman: Right.~~

~~Mr. Nixon: Cost is a whole lot more for small pensions.~~

R-1640 follows.

~~...workers, in other words, a lot more workers who are getting temporary compensation payments, are in fact now getting the lifetime pensions. Up to about nine per cent of injured workers get lifetime pensions.~~

1640

Mr. Chairman: Right.

Mr. Nixon: So it is a whole lot more small pensions being awarded.

Mr. Chairman: Right. But you do not get a pension unless you have a permanent disability, right? Therefore, does that not lead you to believe that those injuries are more severe than they used to be, because previously those large numbers were not getting the permanent pensions? They were going on temporary benefits and then back to work. Now an increasing number of them, 60 per cent more, are getting pensions. I come to the conclusion from that it is because they are more severely injured, which also explains why they are off 12 days longer. Is there something wrong with my logic?

Mr. Nixon: I think you will find a change in the adjudicative processes led to it.

Mr. Chairman: More workers getting pensions? Is that what you are saying?

Mr. Nixon: Yes.

Mr. Chairman: How does anyone know that, though? When your conclusion is different than mine totally, how do we know which is correct?

Mr. Nixon: You do not, and what is needed to finish that is the second half of a study that was proposed originally by the Workers' Compensation Board when it hired the firm of Peat Marwick. It did the first half of the study and the second half of the study, which it left aside and there has not been any call for it to return to do it, was the study that looked at the so-called unexplained portion of the payments there which Peat Marwick identified, at least, as being related to internal procedures and not to specific identifiable features in the act.

Mr. Chairman: OK. But you would agree, would you not, that we each have a legitimate conclusion. We may have come at it from different ways, but my conclusion is just as valid as yours in the absence of any evidence.

Mr. Nixon: Yes.

Mrs. Andrew: I think there is a wee bit of evidence right in the 1986 annual report. If you look at page 16 of the report that deals with occupational injuries and the categories, just by eyeballing it you see a much larger proportion of what appears to be the less serious injuries, the sprains and strains, have increased to almost 50 per cent of claims by category, up from about 34 per cent in 1980. If you look further down, the fractures, some of the burns, scalds and those kinds of things are less as a proportion, which we are encouraged to see. It is very good to see that those more serious kinds of injuries are not taking up as much of the total as they used to. I think even there is some indication that injuries are not worsening but are getting

better in terms of how serious they are.


Mr. Doucet: I think another pertinent point is, in reviewing this presentation with the Workers' Compensation Board itself, it acknowledged more or less that these unexplained areas exist. It has offered to work with us to try to get the explanations. Maybe your explanation will at least be partially a valid one, and ours will as well. But it did indicate that there are definitely, in that unexplained portion, things it can control and things it cannot control at all. We welcomed that offer to work with it. The problem is that in being faced with a whole set of new reforms, to use Ted's term, we may be building on quicksand, or at least a moveable base. We want to get at the answers to the unexplained sections before we add on to this program in any fundamental way.

Mr. Chairman: I have often said I thought that in the end what will bring the board down will be collapse from its own weight as opposed to workers getting injured. We can have a go around with members.

Mr. Kozyra: Let me first say I have had the pleasure or opportunity to have presented two of these somewhat partial presentations, and this one is a little more complete. After those three, I can say I agree with your term when you say it is reaching crisis proportions. If I may make my opening comments to the unfunded liability graph and some observations that I have made here in a rough form, if you take it in segments, 76 to 80 show a very stable situation.

Then 81 to 84 progresses, if you take just that section, in a relatively straight line upwards, which ??you can call "simple arithmetic progression." Then taking 84 to 86 in that way, it by itself is another arithmetic progression. But when you put them all together, in geometry terms, if I remember this from way back...

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(Mr. Kozyra)

~~...and then taking 1985 and 1986 or 1984 to 1986 in that way that it is by itself, is another 20% progression. But if you put them all together and geometry students will remember this from way back when, its geometric progression which shows that now if you go to stage d that is not on here. This would be doubling about every three years which to me, shows a system running out of control. We cannot even anticipate the impact on the society and unfunded liability of burden and so on, if we were allowed to. So, leads me to some other observations or questions. Your recommendations are rather general and I guess you are saying we all have to come to grips with it and we, alone, cannot yet. Will these recommendations—to be a little more specific—eliminate the unexplained factor? That is one of the things. You are kind of pointing away at that, as well. Will they bring the costs under control and in your estimation, if they are under control, what percentage is acceptable? Is it merely inflation rate or is there another factor? So, start with that and I have another one or two.~~

T. Nixon: Well, I will leave it to these gentlemen to say what is acceptable, since he is the consultant. With respect to the unexplained part, the thrust of that was to say that like it or not, the employer community pretty well had to accept—you know, they were ready to live with the five per cent to six per cent accident rate and the level of benefits that produced. They have to live with inflation, have to live with legislative increases and growth in the workforce causing more costs. So, that if they did not have to live with the unexplained part, presumably even though the cost is still pretty high, that is not what the employer community has been complaining about so much with respect to costs. And then really, I think your question is what proportion of the cost of the whole system is the unexplained cost? Presumably, it is about, in 1986 if there is \$140 million of benefit payments that are somewhat unexplained and there was about one billion and something in total paid out—

Interjection: One billion, five.

T. Nixon: One billion, five. So, it is roughly 10 per cent of the payments in total.

Mr. Kozyra: And one of your contentions is the fact that it is unexplained, that is unacceptable.

T. Nixon: That is right.

Mr. Kozyra: And that may be at the heart of the whole matter.

T. Nixon: That is right.

Mr. Kozyra: You went after the Workers' Compensation Appeals Tribunal and it is another area that needs to be brought under control and perhaps because it is, in your estimation, out of control. Perhaps this is, as well.

Are the other recommendations and controlling mechanisms possible before or without bringing the WCAT under control or would one predicate the other?

Mr. Doucet: I will tackle that, if you like, Jim. My answer would be

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no. One of the reservations Mr. Nixon made as an actuary about his presentation was that because we are not absolutely sure how adjudication or judgements will work under a wage loss system, we do not know what it will actually cost. Therefore, until we actually address the WCAT and its operation in a policy sense in parallel with bringing in a well-designed wage loss system—that, by the way, to be specific, we support. We support a well-designed wage loss system that will get at some of these cost problems and some of these unexplained payment problems, not all of them, but some of them. Unless the WCAT issue is addressed and parallel in my view, we will not get hold of the workers' compensation system in an accountable and effective manner. So, we say that you cannot delay for a long time, even though it might be very tempting to do this, delay addressing the relationship of the WCAT to the Workers' Compensation Board. It may be possible to begin the process of the legislative action on a wage loss system and come into the WCAT procedures and issues very shortly thereafter. They do not necessarily all have to be in the same legislation, but we certainly see them being parallel initiatives that have to be addressed.

Mr. Kozyra: One of the things you attacked in that system was not necessarily the lawyers themselves, but their involvement, the legal input, their requirement in just about every case and so on. And you questioned that. Is that correct that you feel that is one of the major components that is bringing this, or causing it to be out of control and an uncertainty there?

Mr. Yarrow: I think that was raised by the chairman of this committee as far as the legal input is concerned. I do not think that we wanted to pin it down as to exactly who it might be in terms of the individual.

Mr. Kozyra: I got it out of here, though, not from the chairman.

~~Mr. Doucet: My answer would be yes, without saying that was correct.~~

R-1650 follows

1650

~~I do not think that we wanted to pin it down as to exactly who it might be in terms of the accident.~~

~~Mr. Yarrow: I got it out of here, not from the chairman.~~

Mr. Doucet: My answer would be yes, without saying you can do all of this without lawyers. The fact is that if you quote Mr. Ellis himself when he appeared before one of these committees when the Workers' Compensation Appeals Tribunal was being considered—and we used this last year in our presentation—he said that he did not want a system that was legalistic and complex and depended on evidentiary processes and so on. He would deal with some number of cases per year and he has not even got anywhere near that target because of the way the hearings process is developed.

It is very much an evidentiary adversarial process, that in the case of decision 72 led to a Court of Appeal ruling on whether the Workers' Compensation Board had the final policy say on an issue, which is ridiculous.

Mr. Chairman: You would think ??

Mr. Doucet: That is right too. We rely on the politicians to do that, Mr. Chairman.

??Mr. D. Smith: May I ask one supplementary on this?

Mrs. Andrew: I just want to add one more thing about the appeals tribunal. There is something wrong about a tribunal that, in terms of the final adjudication, actually pits the employer against the employee, when in theory we are supposed to have a no-fault system. You have got a situation where the smallest employer can really not defend his case before the appeals tribunal. It is so legalistic, the small employer has no hope of being able to be heard there; and I think that is a very grave problem with the system.

??Mr. Yarrow: Employee.

Mrs. Andrew: That is true of the employee too.

Mr. Yarrow: I think the employer also, and I would suggest the employee, but speaking from an employer's viewpoint. It is very difficult in that situation because you are talking about an employee who as an employee if he is sitting next to you at a table may be a very good employee, but you are put into the position of either demeaning the individual or appearing to, or in fact being on the receiving end. It is a very uncomfortable situation. I have been there and I can attest to it.

D.
Mr. V. Smith: It is on this unfunded liability. I am trying to get it clear in my mind. They are terrible graphs to look at, but when you say there are about \$6.2 billion now in unfunded liability—

Mr. Yarrow: That is 1986. It is considerably more now. We just do not have the firm figures.

D.

Mr. Smith: OK in 1986, but are you saying that will be paid out over the next 20 or 25 years, or is that what is actually owing in 1986?

Mr. J. B. Nixon: No. There is a plan to pay off the \$6.2 billion of unfunded liability through the assessment rate process over the period from now to the year 2014. I do not know why it is that particular year. They picked a 30-year period at some point.

Mrs. Marland: Excuse me. Does that mean that that amount of money is already assessed or its obligations, so without any more paying—

Interjections.

Mr. J. B. Nixon: Yes. They are both in the system now and tomorrow. You have. You have got about \$2.9 billion of assets or something, I think, at the end of 1986. You owe more than \$9 billion of liabilities in total, so you have got to come up with another \$6.2 billion.

Mrs. Andrew: That is \$20,000 for every firm in this province.

Mr. Chairman: To be fair to Mr. Smith, the system has not borrowed \$6.2 billion on which you are paying interest. I think that is what Mr. Smith is trying to get at.

D.

Mr. Smith: I am just trying to get this all into perspective. It is an alarming looking chart.

Mr. J. B. Nixon: One of the reasons why it is very alarming, if you look at 1985, there is a big jump up in 1985, and that is when the act was amended to provide for indexed pensions. Prior to that time, there was no provision made for the indexing in future. At the end of 1985, because the act has been amended to guarantee the indexing, the board then beefed up the liabilities, if you like, to now provide in the liabilities that they will in fact guarantee the indexing on them.

D.

Mr. Smith: I will stop right there. Thank you.

Mr. Kozyra: I have one final question. I believe that that indexing is applied to education pensions to cause the same kind of unfunded liability jump and it is around the same amount too—\$6 billion or \$7 billion. If your speculations about the Ministry of Labour amendments to this act are correct, do you see that as an improvement? You showed figures of \$235 million to \$350 million, but if that is all that is increased (C)

R-1655-1 follows.

(Mr. Kozyra)

~~that the Minister of Labour amendments to this act are correct. Doucet says that as an improvement, because you showed figures of \$250 million more that is all increased, that would be a decrease over the present alarming rate of increase about \$2 billion per year. Is that the system slowing down even though it is going up? Or are you drawing that because your speculations, if they are correct, are they alarming also?~~

Mr. Yarrow: I do not think there is any question that they are alarming. I have a grass roots answer, but maybe somebody will answer it more.

Mrs. Andrew: We are talking about additional, annual expenditure.

Mr. Kozyra: Over and above the present?

Mrs. Andrew: Over and above the present.

Mr. Kozyra: Above the present escalation.

Mr. T. Nixon: Say in 1988 the system costs another \$3 million more than it now does and the 1988 assessment are somewhere in the range of \$2.5 billion. If it costs another \$300 million more, then there is more than a 10 per cent increase annually in the cost of the system. If that amount was paid faithfully each and every year, and if everybody was accurate in the way the world was going to unfold in future, then theoretically the unfunded liability would not grow higher and in time it would be liquidated in accordance with the proportion of the assessment rates that is going to that. But, the world has never unfolded in Ontario in the workers' compensation system the way it was planned to.

Mr. Yarrow: The other point from a grass roots level, the credibility gap between the employer on the street and the workers' compensation board, I was an informational meeting where this very point was discussed about liquidating this debt in the year 2014. Someone asked the question, "Does this take into account that we do not know what the definition of an accident is. It is becoming a bigger and bigger thing and more and more things are being covered and the expected timeframe that people will remain on it is increasing. Has that all been taken into account for the year 2014?" Of course the answer was, "No, it is taken on the basis of everything stopping with the definition, whatever it read, in 1986 did." It did not allow for any more expansion in terms of the leniency or the definition of the word accident or incident, as the board itself now calls it.

Mr. Doucet: Could I just piggyback one other comment on it, because you are asking us a very pertinent question about possible legislative reforms. We have been clear that we support some kind of wage loss system that is well designed, with well documented impact studies on it, that would help deal with some of the problems that we have dealt with. But, we do not as a group support that system should cost us one cent more when there is \$140 million unexplained in the system right now.

Mr. Nixon has done the assessment based on the best assumptions he has of the system. I do not, as a representative of the retail trade, again I am sure most of the people here do not, accept that we should reform the system by adding \$235 million to \$300 million on to it. That is not the way to go.

Mr. Kozyra: Mr. Chairman, if I may share one more comment that I am

Mr. Kozyra

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party to. Mr. ??about two months ago presented some charts and slides to the construction association of Thunder Bay. At that time, he showed some dramatic slides and he said in the construction field back in 1972, the cost per employee to the employer, was about \$175 and my figures may be out a little bit. They jumped in 1987 to about \$4,000 for an employer. It was speculated on that kind of rate and so on, the best available figures, that it would double within three to four years to \$8,000. He said at that time you can see the horrendous effect on the entire industry and the employers.

I think that kind of thing is happening. I know back in Thunder Bay and the north, the forest products industry is extremely concerned about what is happening there in the assessments and so on.

Mr. Yarrow: Mr. Chairman, I just state, I should mention the fact that the construction association is represented here today. We have brought with us or asked them if they wished to attend. We do have others from our association with us here today and your comments are very appro.

Mrs. Marland: There are a number of questions that I would like to ask, but perhaps I will start with a statement on page 4, of your submission today. The "ECWC continues to be frustrated by a pension system that as a matter of routine process, provides workers with lucrative pensions, even though they have returned to their pre-accident job with no wage loss."

R-1700-1 follows



(Mrs. Marland)

~~by a pension system that, as a matter of routine process, persons with disabling pensions even though they have returned to pre-accident jobs with no wage loss.~~

1700

Would somebody explain that statement because that is a very significant statement?

Mrs. Andrews: That is a reference to the current pension system, which awards a permanent pension on the basis of a disability ratings schedule that is applied to preinjury earnings. A pension is awarded for life regardless of whether or not that worker is able to return to his or her former job. When they do return to their former job, they can, in addition, have their full wages, as well as this pension. Some workers may have two or three pensions. That is not uncommon in some industries, such as mining, for example.

The issue for us is an equity issue that in those instances there really is no wage loss sustained at all for those workers and other workers who cannot work and who are severely disabled are only awarded what is a very small pension and they cannot live on that pension. We would like to see a reallocation of the moneys from the ones who are in a sense overcompensated to the ones who are undercompensated in a more fair basis. That is what employers would like to see.

• Mr. Yarrow: That is what we mean by benefit neutrality as far as—

Mrs. Marland: Yes.

Mr. Chairman: I am surprised by your provocative use of the word "lucrative" however. Anyway, Mrs. Marland.

Mrs. Marland: You are trying to be impartial though, are you not, Mr. Chairman?

Mr. Chairman: Yes. That is why I used the word "provocative."

Interjection.

Mrs. Marland: I did not know that an injured worker could have a permanent pension if they were able to go back to their pre-accident job without wage loss.

Mrs. Andrew: That is the basis of the current system.

Interjection.

Mrs. Andrew: There are some 120,000 pensioners. We have been told that about 80 per cent of them would not have wage loss. They would have pensions without wage loss and the other 20 per cent would have wage loss and they also have pensions.

Mrs. Marland: If they are able to go back to their pre-accident jobs, then they are compensable injury is not impairing their ability to do

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the job.

Mrs. Andrew: That is correct.

Mrs. Marland: Their compensable injury, is the weighting factor for that related to a shortened length of time that they will be able to work?

Mrs. Andrew: It has nothing to do with the job. It is just a medical assessment of their permanent disability. It might be that their left arm is somewhat more stiff than it used to be, which has really nothing to do with their ability to work, but they have this pension that relates to this business in the elbow. The pension is decided basically on a physical impairment schedule. It has nothing to do with whether or not the employer returns to work or can work a full day or not. It has nothing to do with that.

Mrs. Marland: It has nothing to do with future long-term prognosis?

Mrs. Andrew: No.

Mr. Yarrow: No, and I can give you a case in point in that, which I think is probably the first case that got me interested in employers' compensation was a 79-year-old gentleman who worked for our company briefly for a three-year period in 1967. He worked for us for less than three years. In 1979, he retired at the age of 79 and was found to be partially defective in hearing, and because he was 79, they did not give him a pension. They gave him a \$10,000 one-time payment because he had suffered some loss. There was no question at all in terms of whether or not that loss would have to do with lifestyle or anything else. It was attributed to the fact that he had suffered at some previous time 10 or 15 years before some loss of hearing. There was no proof of it, but in fact he had not received. Because he was older than he would normally be to get a continuing pension, he got a lump sum at age 79. He did not know it was coming.

Mrs. Marland: That is interesting. I think that is a very interesting area and a very interesting point that is made on page 4, the frustration that you express where you say, "??"...seeing a system bogged down in its own bureaucracy." I think yesterday when we had the worker advisory people before us, we were all agreeing that that certainly is a statement of fact. We recognize that. I was personally horrified

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~~I was personally~~ yesterday to find out that in 1988 part of the bogging down in terms of up to four, five or six weeks in time frame is because the worker advisory offices are not equipped with computerized delivery systems whereas they have this incredible time frame to literally physically retrieve these files from another office in a paper form rather than in a systems form.

The statement that the Employers Council on Workers Compensation considers it improper for the Workers' Compensation Appeals Tribunal to routinely issue decisions that conflict with the board policy. Could you give an example of what you mean by that statement?

Mr. Doucet: I guess the most famous example really and the most fundamental one relates to definition of an accident where the Workers' Compensation Board has a definition of accident related to an event in the workplace that is has been following for many years.

Mrs. Marland: Yes.

Mr. Doucet: The Workers' Compensation Appeals Tribunal in a specific leading case has taken another view of that, which has then led to hearings before the board under section 86n as to whether the board's view is the right view or the WCAT's view is the right view. That then led to a referral to the courts to decide whether the Workers' Compensation Board actually had the power to make the ruling on policy terms of what an accident is and; as a result, permeating everything we say today is a huge question mark about the future of the system because nobody knows today which definition of accident pertains, but I understand, and there are people behind me with more expertise than I have on this, that they are now some 15 cases or so that have been referred under section 86n back to the board for it to decide whether its policy approach governs as opposed to the appeals tribunal approach. If you want more specific detail on any of those, we can give it to you afterwards.

Mrs. Marland: You are saying in 15 cases the matter is referred back to the board?

Mr. Doucet: No. The board has the power to revisit a ruling of the tribunal because, in its view, the tribunal has overstepped its bounds in terms of policy. Judith has a specific example of one of those.

Mrs. Andrew: I was just going to return to the submission ??on the routinely element. I think there are other more subtle ways in which the appeals tribunal has actually changed the definition of accident. They have in fact ruled that if an injury happens in the workplace, even though there is no overt event to look at, the presumption is that it is workplace related unless the employer can prove that it is not related to the workplace.

There is a changing of the onus there. If you feel pain in the workplace, then the presumption is that it was workplace related. They have also had decisions that have been referred to as time-bomb decisions where in the sense the pain or the injury might take place away from the work place, but it is attributed to the workplace in some way. There are all sorts of very subtle ways in which the appeals tribunal has touched the definition of accident that the board has not even taken up as an issue that they are challenging on policy grounds.

Mrs. Marland: This is a complexity of the definition of accident, trauma sustained injury versus long-time wear and tear through that kind of work possibly, the hockey game or the baseball game or up on the ladder and so forth.

Mr. Yarrow: Yes.

Mrs. Marland: Those kinds of things that all of us. When all of us do those things, there is a certain amount of wear and tear on us physically, but is that where the problem that when the WCB was originally established that it was to deal with trauma—

Mr. Yarrow: Traumatic accidents.

Mrs. Marland: --from an on-the-job accident rather than strain and wear and tear.

Mr. Yarrow: Yes.

Mrs. Marland: Sometimes a traumatic injury manifests itself clinically in those other kinds of symptoms though and I guess that is where the problem is.

Mr. Doucet: It is one of the problems, yes.

Mrs. Andrew: We, as a group, would like to see the definition of accident clarified in legislation so that it is clear and understandable to everyone and so that it is—

Mrs. Marland: It is not defined in legislation?

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1710

Mrs. Andrews: It is vague and the scope for interpretation is so broad that the appeals tribunal can interpret it quite differently from the board and the board's own interpretation changes over time.

Mrs. Marland: Could we make a note—

Mr. Yarrow: When as an employer, you talk to the legislators, they will tell you that all they do is write the law and the Workers' Compensation Board interprets. Then you go to the Workers' Compensation Board and the Workers' Compensation Board says, "We do not write the law, we only interpret it," and you end up with the tail chasing the dog, the dog chasing the tail. You keep getting bounced from pillar to post when you are trying to find out why.

Mrs. Marland: Well, I think that is an important aspect; if it is not clarified in legislation, it is something that I think this committee should look at and I would ask that our researcher make a note of that. I think that is terribly important if that is the base from which we start because in the best interest of injured workers, there are obviously going to be workers who would benefit from a more accurate definition of their eligibility which is what we are talking about, rather than have it at the whim of three panel members, or whatever number, sitting on the tribunal that are going to decide my future based on their interpretation and not based on something in law.

That brings me to the next question that I have had personal concern with, having gone down to an appeals hearing; your statement about the role of the tribunal office, that it should be reviewed and there is not a need for legal input in all cases. I want to tell you that when you talk about the poor worker, in sense of experience, going before that tribunal, maybe it is a small business, Mrs. Andrews. In this case, the reason I got involved was that this injured worker had already paid a lawyer \$15,000 to represent him and the case had been protracted and a year later the lawyer said, "Well, the \$15,000 has run out and my time and every time the case came back for review," —

Mr. Chairman: The lawyer charged \$15,000.

Mrs. Marland: Yes! Fifteen thousand dollars. When this injured worker called me I said, "There is something wrong with the system." Now, this injured worker is Greek and he hired a lawyer who spoke his language very proficiently.

Mr. Chairman: He should have had an actuary.

Mrs. Marland: It was my first experience with this process in detail and I was totally disgusted that an injured worker, in order to get what is

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his right, in fairness, if he is eligible for compensation, had to hire a lawyer and had to pay that kind of money. And, as I say, at the end of the year the \$15,000 was gone and he was asking for another \$10,000. That is when I said, "Look, I will come with you. I am not professing to have any legal background, but like most of us I have a lot of commonsense. I cannot see that this can be so complicated that you need to go with a lawyer." So, off we went, and we were quite successful. But, I really felt the ammunition was on the other side and I felt that it was not a court of equal access by any means. I thought the system was poor in the overall interest of what workers' compensation should be about in this province from both side, from the employers' side and the employees' side. I just thought it was a big rocky mess, to tell you the truth and I was not at all impressed. I have become less impressed; that was two years ago. So, I certainly share the frustration of some of the things that you are expressing in here but I share it on both sides.

Mr. Yarrow: As do we. I think our point is and has been and will continue to be, that if you treat the worker fairly, the employer automatically gets treated fairly to at least a large degree.

Mrs. Marland: That is right. And the other thing that I think is relevant here, this committee has just spent a very interesting number of months looking into mining accidents, as you probably aware of through the Ontario Mining Association...

R-1715 to follow.

(Mrs. Marland)

and you know the other thing that I think is relevant here, as this Committee has just spent a very interesting number of months looking at these accidents as you are probably coming through the Ontario Ministry of Health who are one of your groups, the fact is that the longer and more protracted these hearings become, the weaker and more feeble becomes the human recollection of how things progress and maybe how I physically felt. And although there are ongoing doctor's records if it was an accident, the witnesses and the evidence and everything else becomes less significant.

Do you have a long list, Mr. Chairman?

Mr. Chairman: No, but it is an important list.

Mrs. Marland: I know, but I yielded the floor yesterday and I never got it back.

Mr. Chairman: That is quite all right. Do not feel pressured at all.

Mrs. Marland: You talk about ineffective rehabilitation plus the increasingly complex appeals process that compromises the basic principle of accessibility, and these are present realities. We have discussed the appeals process. I would like to know what you mean by ineffective rehabilitation. That is a very damning statement also.

Mr. Yarrow: First from a grass-roots standpoint if I might, ineffective in one sense from a grass-roots level is the time it takes to get into the system. It is very demoralizing. I have had personal experience where a supervisor waits 15 months to be seen, never does get anything accomplished at the Downsview rehab centre and has wasted all of this individual's time waiting for nothing to happen. He comes back to work and is exactly where that individual was 15 months before. He is still with the pain and still with the problem and will probably have the problem next year at this same time. The frustration is there on that person's part, not being able to be seen by the system.

We make a point in here, very strongly, of suggesting that the thrust that the government is talking about, the Ministry of Health, in terms of regionalizing, we support that concept but I think there is a caution and a proviso that has to be put in there too.

That, very simply, is this. There are not the facilities in the province, as we speak, to accomplish that. That has to be done before we say we are going to regionalize and therefore take mental pressure off the use of the Downsview rehab centre. It has to be in place first and it is not.

We support it, when it is in place.

Mrs. Marland: Do you see that as being a fairly hefty investment to put in place?

Mr. Yarrow: I think it depends where they put it and to what extent they go. You can talk about all kinds of things as far as Downsview is concerned. It can become a very specialized area. It certainly is expensive now to be bringing somebody down from Thunder Bay to receive treatment there. It is bad enough if you are in Toronto trying to get, but if you bringing them

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down from some other point in the province, it becomes very difficult. I think it depends where they go and to what extent they are going to regionalize and how they are going to base it, whether it is going to be on the severity of the rehabilitation required or the degree of it required.

Mrs. Marland: In this statement, when you are talking about ineffective rehabilitation, are you talking about major job retraining and perhaps reclassifications of those workers? Is it that kind of category that this is referring to?

Mrs. Andrew: I think Jim hit the nail on the head when he said it is the long delay before any intervention is contemplated. I think, on average, it is about 18 months before the Workers' Compensation Board intervenes. If you talk to medical practitioners, they say it should be done almost immediately. There should be a prognosis and some timetabling of how the rehabilitation will progress and the employee should have, immediately, the expectation that after a certain number of weeks he or she will be ready to be reinstated. Instead, these people are simply left and they fall through the cracks for 18 months and by that time, they are demoralized and the hope of actually rehabilitating them and getting them back to work is pretty much gone.

Mrs. Marland: So the cost is greater, I mean in the long term.

Mr. Yarrow: The cost both ways, dollars as well as in ??effort.

The Downsview rehab centre realizes this itself. I wish I could remember the lady's name but I can get it if it is required. At an Industrial Accident Prevention Association conference that I attended, the person in charge of carpal tunnel syndrome and that area of expertise at Downsview stated categorically

R-1720-1 follows



(Mr. Yarrow)

~~... get it if it is required. At an Industrial Accident Prevention Association~~
~~conference that I attended, the person in charge of occupational medicine~~
~~and that area of expertise at Downview stated categorically that if she does~~
not see the individual come into the system within six to eight weeks, it
becomes mostly ineffective after that point, and we had one case in point that
took months and months.

1720

Mrs. Marland: This is one of the aspects I was discussing yesterday and the fact that when we talk about—as you are recommending, I notice on page your early referral intervention. What I was saying is that when treatment is delayed, you have two things that can happen. You have the example you just gave, where after 15 months they come back and they are the same as they were, but you also have a deterioration. You have the other alternative which is where treatment is delayed and is not accessible to the injured worker. The injury in itself becomes more severe because he needs the physiotherapy or whatever the rehabilitative process has to be for that individual.

So the long-term overall financial burden on everybody becomes greater and very often the prognosis and the recovery opportunities are diminishing because the accessibility is not there; it does not exist. When I look at the list of associations that you represent—of course there is not anything in these areas that would not cover all kinds of sustained injuries in terms of the industries. I am sure that a lot of those kinds of workers in these areas, if they sustain something that is immediately treated and the body is physically able to be repaired, the worker is back working. That worker is also spending money because he is earning his wages. The whole economic cycle benefits in terms of crass monetary aspects, but the morale aspects of those individuals as employees, which affect other employees which affect the industries; the whole thing is so interrelated that it just does not make any common sense at all to have protraction of the system; it becomes a nonsystem in fact. That is what we have today with workers' compensation.

Mr. Doucet: Mrs. Marland, we consider this such an important area, we have taken two other initiatives that do not wait for reforms in the workers' compensation area. With the medical profession, the Ontario Medical Association, which has a rehabilitation committee of its own, and a very proactive young doctor leading that charge, we are trying to improve the patient-doctor-employer communications network, where the doctor community now is saying, "Look, this is part of your care, part of your becoming well again to be back at work."

The second one, very critical in the retail trade at least but we hope applies to other sectors of the Ontario economy, is the development of modified work guidelines. It is not always possible for the worker to go back to exactly the same job immediately, but perhaps as part of the worker's care and improvement in rehabilitation, he can do some kind of work that is defined in a different way.

Mrs. Marland: Which helps their morale and their mental health.

Mr. Doucet: Yes, and that takes into account both the union's

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position, the worker's position, the doctor's position and so on. We are publishing these modified work guidelines with the Workers' Compensation Board's blessing very, very shortly. It is, I would say, one of the highest priority items outside of the legislative framework that we need to address, and you should take that into account when you address these matters in your report.

Mr. Chairman: I hope you will send us a copy of those.

Mr. Doucet: I would be delighted to.

D.

Mr. VSmith: I will try to keep to a short question here. Can you explain or have you looked into it far enough on the rates of assessment? As I looked at the annual report, you have assessment rates from anywhere from 10 cents per 100 up to \$28-and-something per 100, that 10 cents being the lowest rate of assessment is even lower than it was back in 1980.

To me, I do not know who is running a company that is at such a low risk that all he needs to pay is 10 cents. I happen to be in farming and I think last year I paid \$5.93 and I think this year it goes to \$5.63 per \$100 of payroll. Have you got any comments on 10 cents? That to me is way out of whack.

~~Mr. Bliven: The 10 cent rate applies only to certain types of accounts.~~

R1725 follows



(Mr. Smith)

~~100 of payroll. Do you have any comments on 10-cent? That is a very
substantial~~

Mr. Nixon: The 10-cent rate only applies to chartered accountants.

Mr. Yarrow: If they fall off their pencils.

Mrs. Andrew: Too many paper cuts.

Mr. Nixon: I am not an accountant.

Mr. Chairman: Who was it who said that actuaries and accountants have a sense of humour?

Mr. Nixon: I am trying to get the right personality.

Mr. Smith: Is there anywhere you can say, "Listen, if you are going to be part of this game, this process, this WCB—" I mean, 10 cents is not even realistic. I would have to think that if you are talking about the accounting system, there are fairly capable people paying the bill. At least they know how to charge when they send you one anyway. It just does not seem realistic.

Mr. Nixon: The accountants were in the broad clerical rate group. The accountants basically have very few claims, if ever any. It is probably an anomaly of the act. I know what the origin is, but they probably should not even be covered by the act if one accepts the premise that a lot of the other white-collar industries are also not covered by the act.

The origin of it was that when accountants went out and worked in different locations and counted and did inventory, they were in hazardous positions and should be covered under the act. So they were thrown in the broad clerical rate group. The accountants lobbied effectively and got themselves extracted from the clerical rate group, set up their own rate group, and they do not have any claims to speak of.

They should not be covered at all is a better argument. Or you ought to argue that everybody in the province ought to be covered. You ought to argue. I will not make that argument.

Mr. Smith: I have sent a letter to Mr. Elgie and likely I could be chastised for something I said in it, but I believe something has to happen. In fact, I think I even suggested that maybe the people should start to pay a little bit and then they would not be treated so badly in some ways or some cases, because I get enough in my office when they do apply for help under WCB.

I have heard large company personnel—and I will not give you the company's name or the person's name—say that they covered people for accidents in their homes. I say that is very unfair to a small company. I come from a petrochemical area, so we are talking big companies, but they claim that they pay for accidents in the home. I do not know how they word it when they write up a claim or whether they do write up a claim or they just give the people their salary.

To me, it is very unfair to treat a person ??working in a huge company,

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yet a person who maybe hires three or four people— If one gets hurt in the home and he sees his buddy down the street being paid while he is off work for being hurt in the home, to me there has to be more inspection done on this, because it is killing the small employer. That is the way I see it.

Mr. Yarrow: If I may interject, I think you are accurate, but I think for perhaps partly the wrong reason. What has happened is that with the changing of the definition of "accident," the kinds of things that are being covered can happen outside the workplace but manifest themselves within the workplace. A back injury can happen on a squash court, but somebody picking up a bundle of typing paper from a shelf and leaning over, receiving a back pain or a spasm, can then put in a claim and maybe even in their own mind believe that it occurred in the course of their job, where in fact it might have happened the night before on the squash court or two weeks before on the squash court.

We are back again to the definition of the word "accident." When you were talking about traumatic accidents, broken arms, cut fingers, whatever, on the job accidents, you did not have the problem. We went from 1915 to the mid-1970s or later without the difficulty because of that definition. Because the definition has changed, you now enter into the lifestyle, the things that happen outside the workplace that can influence the claims that happen within the workplace.

D.

Mr. Smith: You do not think someone could break a leg or an arm at home and a company could somehow—do not ask me how—still keep paying that individual?

Mr. Yarrow: The company could choose to do that, but I would submit the company would not—

D.

Mr. Smith: Put in a claim?

Mr. Yarrow: I would doubt very much that the company is going to be caught putting in a claim for that individual. No small company certainly would do it because of the rating that occurs to them. I cannot imagine a large company doing it either.

~~Mr. Yarrow: You would not put the claim in. You would have to have a Compensation Board for it, but the company certainly could have its...~~

R-1730 follows

~~(Mr. Yarrow)~~

~~No small company certainly would do it because of the rating that occurs to them. I cannot imagine a large company doing it either.~~

1730

Mr. T. Nixon: We would not put the claim into workers' compensation for them, but the company certainly could have its long-term disability program and it's insured long-term disability program.

Mr. D. Smith: Well they were not talking long-term disability.

Mr. T. Nixon: Workers' comp.

Mr. D. Smith: Yes. That is why I say I could hardly believe what I was hearing. They worked in personnel, anyway. That too me is just a very low rate and the other ones are extremely high. Like \$28.05 for every 100. I do not know how a company can keep going, quite frankly.

Mr. Leone: I was late. I would like to know about this council. How long has it been in existence?

Mr. Yarrow: Since 1983.

Mr. Leone: Just for five years then. These are the members?

Mrs. Andrew: Yes.

Mr. Leone: You are completely privately supported? Do you receive any government financing of any kind?

Mr. Yarrow: No.

Mrs. Andrew: Absolutely not.

Mr. Leone: You are dealing just with WC cases?

Mr. Yarrow: Anything to do with workers' compensation.

Mr. Leone: Just with that. So you must be experts, I guess.

Mr. Chairman: Do you have any exemployees?

Mr. Yarrow: No permanent staff.

Mr. Doucet: Contracted out staff.

Mr. Leone: Okay, so you know that we have a problem with workers' compensation. Naturally you make recommendations. Every chance you get you make recommendations on the responses like Professor Weiler report and everything. I hope that while you are protecting the employers and defending, at the same time I think your council tries to be fair also with the injured workers. In other words, you want to offer the government ways to save money.

Mr. Yarrow: Selfishly it is in our own best interests.

Mr. Leone: Okay. One thing I would like, since you are only working

Mr. Leone

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in these cases here. Have you made some studies with other nations, like European nations or with the United States? Is our system better, worse or ??

Mr. Yarrow: Specifically I would say not in terms of the ECWC. Workers' compensation is a provincial matter and while we watch with interest what happens across Canada, let alone other countries, our specific mandate is within the province of Ontario. That is not to say that individual groups amongst us might now have. The Canadian Federation of Independent Business for instance might, in terms of some of their studies, incorporate facts and figures from elsewhere.

Mrs. Andrew: Yes, CFRB conducted a study this past year that was released in December, and deals with some comparative aspects to the US system. Again, it is very hard to compare a workers' compensation system across jurisdictional borders because the systems are so different in terms of what they cover. Rate group configurations are very different. It is not possible really to look at a firm in the retail trade in Ontario and understand how that firm would be treated in a US state or in a European jurisdiction on a fair basis, because the benefits are quite different and the way the assessments are derived are quite different.

Mr. Doucet: Mr. Leone, I want to be clear from the retail point of view, I cannot speak for the other sectors here, maybe they do want to pop up, with retail companies that I deal with, that operate in every province of Canada, without question they find the Ontario program is the leader in terms of the types of additional benefits that are provided, in terms of the types of problems we have discussed on the tribunal. I am talking about a leader, not in a positive sense, a leader in terms of trying to be progressive in legislation and then finding out it has not met the objectives that were set for it, or it has not come in at the cost levels that were meant for it.

From that perspective, retailers who operate right across the country, find the Ontario system the most difficulty to deal with at this time. That is why we are here today, hoping to improve it. Ontario is a model for other provinces and when they look at Ontario and say, "Well, it has been tried there, maybe we should try it here." We get worried.

I think Judith's point is well taken. You cannot do a comparison very well, but none the less, the retail community is saying where is ??

R-1735-1 follows



Mr. Doulet

~~tried there, maybe we should try it here. We get worried. So I think search
point is well taken. You cannot do a comparison very well, but none the less
the whole community is saying there is a problem.~~

Mr. Miller: Maybe it depends if you are getting compensation benefits.

T. Nixon: Actually, among all the clients that the firm of Mercer has, a lot of national firms, they are probably not a bad group to try talking to occasionally. You can pick a few national companies and ask the people who are in charge of workers' compensation, "How do things size up across the country?" It is probably not a bad thing to do. It is better for you to ask them than me sit and tell you.

Mr. Miller: It has probably been covered about as well as it has been covered today. It is obvious there are real problems and that running a deficit like we are and the waste that appears to be, there is not going to be an easy solution. We have studied it, getting back to the workers themselves, people who have been around here for awhile and watched the changes being made through the Ombudsman, I think that is where a lot of recommendations— There is an independent study going back to the late 1970s making recommendations in favour of the injured worker. It is always very difficult.

I guess if you get to the point of that injury, you talk about back injuries and we have to listen to plenty of those cases, where it was that the injury really happened, and to prove that injury is not very easy to do. I do not know. The committee is going to have to make some recommendations and the minister, I believe, is taking a close look at it and I think it has to be funded.

Does the employer pay the total compensation?

Mr. Yarrow: Yes.

Mr. Miller: It has to be financed. I think it is only fair that we do not ??pay it out of the legal profession to fight those cases for you. I think that is the message here this afternoon, that it should be fairly simple and straightforward. If you are paying into a retirement pension plan, when you get up to 55 years old and you cannot work, then you have to have income, so you have to go either to welfare or you go to the Canada pension plan if you are totally disabled and depending your working conditions you have not been able to put enough money away to take care of yourself, then you have to come to this stage.

You have made your ??points and I have heard it plenty of times. I am a farmer. I have been injured lots of time too. I have worked with those injuries and have never been able to collect. You have to protect yourself. I suppose if we get ??out of here I suspect we might have some protection. I do not know. That is why we came here.

D.

Mr. V. Smith: An irate constituent? Is that it?

Mr. Miller: No, I do not know. I have no intentions. Thank God, we have not had to do that. It is going to be interesting to resolve it.

Mr. Miller

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Have you sat down as a group with Dr. Elgie to discuss these problems?

Mr. Yarrow: They have seen our—

Mr. Miller: I know you have said that. Have you sat down across the table from him. He is the chairman.

Mr. Yarrow: I think this has happened on various levels, and it happening more and more, thankfully. I think our problem is that we do not see the ready solutions necessarily coming out of those discussion. There are small gains but I do not think we see any large gains and certainly the employer on the street sees no gains because all they do is see the rate of their assessment doubling, tripling and quadrupling with the rate of inflation as times goes by. I think that is part of the problem.


Mr. Miller: I think you would have to say that the employers see some benefits from it.

Mr. Yarrow: Some employers. The problem is not all of them are— This is our very point. Some of them yes. I think as has been mentioned under the pension side, some are being overcompensated. On the other hand, some are being undercompensated. It is not equal.

Mr. Miller: That is what I am saying. Going back to the late 1960s when the wages were very low and you have been on that compensation program at \$3 or \$4 an hour, that is where the indexation has been forced to take place because of the inflation during the 1970s. That has brought about the increases.

Mr. Yarrow: In part. I think what you have to keep in mind that the presentation we made talked in terms of constant dollars and we did that on purpose to take the inflation factor out of it to the largest degree that we could. In spite of taking inflation out of it, it is still increasing. I think that must be understood. All things withdrawn, but you might tie into the inflationary spiral ...

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~~to the largest degree that we could. In spite of taking inflation out of it, it is still increasing. I think that must be understood. All things considered, that you might be into the inflation, and I has still not seen a level in terms of cost.~~

1740

Mr. Miller: I think any legislation that comes in before this Legislature, everybody gets an opportunity to have input into it. ?? in effect. I do not really think you can currently blame the legislators for all the problems.

Mr. Yarrow: No. That is not our intent. I think our intent is to suggest, so that we are not put into a position of blaming the legislators, that, first of all, you consult with us and after you have consulted with us and all of the number crunching has been done, we look at the impact of each change and how it is going to be funded. We do not feel as an employers group that that has been done up to this point. This is not partisan. This happens with the previous administrations too.

Mr. Miller: No, I am not ??getting at that. When I speak, I am not speaking as a partisan either.

Mr. Yarrow: Yes. Nor are we.

Mr. Miller: Because I think it is open, the system here, any legislation that comes in, you have input into it, it is made public and everybody has access to it. I think we try to listen as long as I have been around, whether it was the opposition, minority or whatever type of government we have had. I think there has always been lots of public input.

Mr. Yarrow: Keep that in mind when this legislation comes down and try to find the impact in it. If there is an impact and it is shown, then we may not like it, but we would have to be satisfied that at least that exercise has been done.

Mr. Chairman: OK, Mr. Miller?

Mr. Miller: Yes.

Mr. Chairman: I was particularly interested in page 2 of your brief on reinstatement rights and vocational rehabilitation. The employers' council "believes that a satisfactory and effective model instituting limited reinstatement rights can be developed." I have a funny feeling that is going to be an issue, reinstatement rights, because there is increasing pressure on the legislators, I can tell you, to do something about the right of workers to go back to their job, whether it is the same job or another job.

When we see those numbers of injured workers in our offices and out front demonstrating and so forth, with a lot of those that is the problem they have is that they may only have a 30 per cent disability and even a lot of them less than that and they have no job to go back to. They can get around, they can talk, but there is no job for them to go back to. What do you mean by a limited reinstatement right?

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Mr. James: I think we made an appeal to the Ministry of Labour and we simply said that there were limited rights, which would require an employer to hold open a job for a returning injured employee within reasonable restrictions. Our debate has certainly concerned on what reasonable rights are and what reasonable restrictions are, but a more accurate label we think is limited rights of reinstatement because you cannot make it absolute. You do not know how long the man is going to be away for. You cannot hold out a job indefinitely and you do not know whether he will be completely able to handle that position. I mean within reasonable limits, yes.

Mr. Chairman: As legislators, and I cannot remember when this was, I remember we had a very good debate on the committee one time about this and there was a real concern expressed for the small employer who might have three or four employees and every job is a full-time job.

Mr. Yarrow: One of a kind.

Mr. Chairman: That is right and utilizing all the physical capacities of that worker. That really poses a concern, but when you talk about limited reinstatement rights, I was not sure whether you meant for companies of 20 employees or more or whether you meant a limited right for that worker to be guaranteed--

Mr. Yarrow: I think in previous submissions we have had a formula.

Mrs. Andrew: We did get into some design features in that sense by size of firm. I should say that from the point of view of the small firm community, I think their predisposition to having the employee back is quite strong.

Obviously smaller firms are very strapped in terms of qualified labour and want their trained employees to come back as soon as possible. I think the big roadblock for a small employer is this 18-month delay and the indefinite timetable. If you have one person away on a four-person staff, that is 25 per cent of your workforce and you just cannot go on very long with that kind of circumstance. Our submission does take that into account. We suggested that a right would be appropriate for full-time employees of the employer with some degree of tenure to the employer and for a year generally, but--

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(Ms. Andrew)

...right would be appropriate for full time employees with some degree of tenure to the employer and for a year generally, but for firms with under 50 employees within six months.

Mr. Chairman: You mean they must return within six months.

Ms. Andrew: Mmm. Because the smaller the firm is, the more difficult it is to manage without someone in that period of time. We would hope that the ministry would not lead with legislation in this area as opposed to addressing the road blocks to getting people back. I do not think, for the most part, that employers are unwilling to take people back, it is just that delays and the uncertainty has been so bad, they are virtually forced to hire someone else.

We have dealt in our submission with not only the issue of rights but also the issue of responsibilities and we have set out a number of responsibilities for all the parties involved: the employer, the employee, if represented by a union, his union, the medical practitioner and the board. We think it should be a bringing together of responsibilities on all of those parties to do whatever possible to reinstate the injured worker.

Mr. Chairman: I know that in my own constituency, which is largely mining and forestry, there is one of the companies related to the forestry industry that is a terrible employer in that regard. Wages are good and so forth but if a worker gets hurt on the job and ends up with a bad back or whatever— That is a tough business, the forestry business. There is simply no light duty and it is not because it is a small firm, believe me.

So, those kind of employers are making it very tough on people like us, who I know that if we just send out encouraging letters to employers, that employer will not do a thing about it and only legislation will make that employer reinstate injured workers who are partially disabled. I can tell you that right now. That is the old story of some of them making it difficult for everyone else.

Mr. Yarrow: There may need to be exceptions but I would suggest that the responsible employer community would find no fault with a formula somewhat along the lines that is being suggested. We waited 15 months for an employee to come back and my firm only has 20 employees. We waited 15 months to bring that person back on to work and would have taken them gladly sooner had they been treated sooner. The fact was the individual came back without being treated but being off for 15 months.

Mr. Chairman: I just have one final question. Has anyone ever asked the employers, or done any numbers, on what happens if the employer, rather than compensation kicking in the first day, if the employer assumes the first week's wages and then compensation kicks in from the second week on. That is the case in some jurisdictions and I do not know any numbers, I do not know whether it would cost the employers more or less quite frankly. Have you done any work on that?

Mr. Nixon: No we have not done it specifically. That is quite doable, actually. The board has statistical data that one could do that with. If we are contemplating paying full pay for the first week, then I guess the

Mr. T. Nixon

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question of whether you would be contemplating full wages for the first week and then dropping down to what amounts to 75 per cent of gross or 90 per cent of net. It is going to cost more if you are going to pay 100 per cent rather than 75 per cent, obviously. But I think that one of the questions that came up when we did contemplate this is whether or not if the person was really only off for two days and came back to work and that was the end of it, whether you were still going to have to file a claim.

Mr. Chairman: In case there is a future complication.

Mr. T. Nixon: Yeah. In case there is a future— That is right. We did look at this as a alternative in a way for experience rating on small firms. In a way we did a bit of a study where it was called a deductible in effect. In other words, the employer paid for the first week and then there was some true insurance thereafter and it may well be the only way you could get any meaningful experience rating on very small firms. Their experience just is not very credible. You might go three years without a claim, this kind of thing. So that was one way to fight that.

Mr. Yarrow: Because of the fear of the system, I can tell you what happens in some cases. Some employers as a practice 

~~On their experience just is not very credible. You might go three years without a claim, this kind of thing. So that was one way ??or fighting it.~~

1750

Mr. Yarrow: Because of fear of the system, I can tell you what happens in some cases. As a practice, some employers, some on an individual basis and some because they have been raided, choose to suggest that the employee remain on their time card if they are paid hourly, and certainly, if it is a salaried situation, you do not necessarily have the same problem. But on an hourly basis, they will pay them for two or three days if they realize that that is all that is going to be involved.

You do not have to file as a claim. You can file a claim and they will open a file and it not be a compensable accident. If you pay the individual, there is no compensation coming from the Workers' Compensation board for that particular claim—we have done that ourselves—so long as they do not effectively go off the job. We bring them back and sit them down in a chair and say, "Do what you can, if anything," so long as the doctor agrees, of course. In many cases, it is so minor, that this happens now, and it is a fear of the system, particularly by companies that have been raided.

Mr. Chairman: Okay. Do any other members have any other questions for the Employers' Council on Workers Compensation? If not, Mr. Yarrow, thank you very much, you and your colleagues, for coming before the committee. We may or may not be inviting you to do the same in the next few months. We thank you very much for coming before this committee.

Mr. Yarrow: I would just like to close on a somewhat lighter note. I think with the idea of us coming here and talking, we always hope that it is not just so much rhetoric that goes back and forth.

I think the communication is very important. I would like to close off with an illustration that a gentleman, a Dr. Barry Kurtzer, gave at an ??IAPA convention at the same conference I was referring to earlier, about the need for the communication. He opened his talk by suggesting that doctors really do not know what is happening in the employer community. He was talking from a doctor's perspective. He had an overhead, such as Ted was showing us earlier, of a cartoon. It was a Herman cartoon. Herman is sitting across from his doctor, and his doctor has the caption underneath: "It is too bad you are unemployed. You need a couple of weeks off."

Mr. Chairman: I will not touch that one. Thank you very much for your presentation.

To members of the committee, on Monday, we are not meeting here. We are meeting in the Macdonald Block in the Huron Room which is on the second floor.

For those of you who were at the demonstration the other day, you perhaps heard the organizers of that demonstration invite all the injured workers to come there. The injured workers are meeting at 3 o'clock and then going over to that room.

On Monday, we only have the afternoon for the injured workers' groups,

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so it would be very nice if we could be over there and start as close to 3:30 as possible to give them a fair hearing.

Mrs. Marland: The Huron Room?

Mr. Chairman: The Huron Room, in the Macdonald Block, on the second floor.

Mr. T. Nixon: Do you have to wear battle dress?

Mr. Chairman: If you come, wear battle dress.

The committee adjourned at 5:54 p.m.

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STANDING COMMITTEE ON RESOURCES DEVELOPMENT

ANNUAL REPORT, WORKERS' COMPENSATION BOARD, 1986

MONDAY, JUNE 6, 1988

Draft Transcript



STANDING COMMITTEE ON RESOURCES DEVELOPMENT

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Witnesses:

From the Toronto Workers' Compensation Board Caseworkers Group:

Smith, Lorraine; Industrial Accident Victims Group of Ontario

Lipes, Ellen; Industrial Accident Victims Group of Ontario

Endicott, Marion; Injured Workers Consultants

Buonastella, Orlando, Translator

Howlett, Susan, Injured Workers Consultants

McKinnon, John, Lawyer, Kensington-Bellwoods Community Legal Clinic

From the Union of Injured Workers:

Cauchi, Eddy, Chairman; Asbestos Victims of Ontario

Soares, José

From the Thunder Bay and District Injured Workers Support Group:

Mantis, Steve

Caissie, George, President

From the Southwest Legal Clinics:

Slinger, John T., Lawyer, McQuesten Legal and Community Services

From the Injured Workers Association, Welland District:

Comi, Donald, President

From the Southwest Region Clinics' Association:

Craig, David P.; Lawyer, Halton Hills Community Legal Clinic

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Monday, June 6, 1988

The committee met at 3:45 p.m. in the Huron Room, Macdonald Block.

1986 ANNUAL REPORT OF THE WORKERS' COMPENSATION BOARD
(continued)

Mr. Chairman: The standing committee on resources development will come to order. This afternoon, the committee is hearing from the injured workers' groups from across Ontario. We only have until 6 o'clock because that is when the Legislature adjourns and that is when we adjourn, as well. I wish we had more time but we simply do not. So I would ask that the presentations be fairly brief because you know the time restraint we have as well as I do. We are here today to listen to your concerns and to the people who are speaking on your behalf.

We are very pleased you are here. We are happy to see as many here. We did not think there were going to be this many but we are very happy that there is, because when this committee looks at the problems of workers' compensation, you are the reason we look at the problem. We must always keep that in mind. So without any further delay, I should introduce the members of the committee who are up here for those you do not know.

On my far right is Gordon Miller. Next to him is Mike Brown, Bud Wildman on my right, Laureano Leone to my left and Shirley Collins. That is the committee. There are a couple of committee members we hope will be joining us in the next little while. So without any delay, we will move right into it because of our time constraints.

I do not know who is making the first presentation. I will that over to you and if you would introduce yourselves so that everybody knows who is speaking.

Mrs. Smith: My name is Lorraine Smith and I am representing the Toronto Workers' Compensation Board Caseworkers Group. It is a group of Toronto legal clinics who represent injured workers with their problems with the Workers' Compensation Board. Eddy Cauchi is here with us today. He is the president of the Union of Injured Workers and this presentation is a joint presentation of the legal clinic groups and the Union of Injured Workers. I think I would like Eddy to say a few words first on behalf of the union.

Mr. Cauchi: As Lorraine said, my name is Eddy Cauchi. I am from the ??asbestos victims of Ontario and I am also the chairman of the Injured Workers' of Ontario.

As Lorraine said, we all have something to say here and I would like to introduce you to the whole table here. To my right is Lorraine Smith from the Industrial Accident Victims' Group of Ontario, Susan Howlett of Injured Workers' Consultants, Ellen Lipis from INVGO and Marion Endicott on my far right from Injured Workers' Consultants. John McKenna is right behind me. I

Mr. Cauchi

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just took his chair.

I have just been out of circulation for a while because I had a heart attack dealing with the compensation ??board. If the ??stress does not kill you, the compensation people will, but I am not here for that kind of discussion today. That is another matter.

I notice here in front of me, ladies and gentlemen, it is the same game but a new team and I am sick and tired of coming here, year after year, wasting our time. There are a lot of people on crutches and in wheelchairs. They come from their houses. They leave their wives and kids. Somehow or other, they manage to get here and if you think it is easy to get here for some of these people, you try to be crippled like some of these people and make it to Queen's Park from Downsview and from all over Ontario.

What I really want to say to you people is that I know we have a big overall majority in Ontario now and there is no reason why the Liberal government that waited 40 years criticizing the Tories and making recommendations when they were in opposition, there is no reason now why the Liberals cannot fulfil their obligations.

Their obligations are all over. We do not forget. Injured workers do not forget. We might be injured. We might be working class, digging ditches, but we are not stupid. When we go to Loblaws, we pay as much as anybody else. They do not tell us we are injured or we are Italian or Maltese or whatever. They say it costs that much and . . .

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(Mr. Cauchi)

~~... might be injured. He might be working class, digging ditches, but we are not stupid. When we go to Lobbards we pay as much as anybody else. They do not tell us, "You're injured, you're Italian, or Maltese, or whatever." They say it costs that much and we have to pay it. Whether it is rent, or shoes for the kids or school taxes, when you pay your taxes in Ontario, they do not tell you: "OK, you're on compensation. You have to pay less." "No, you have to pay just as much as your next door neighbour."~~

1550

I cannot afford to talk to you at length. I would love to, as the chairman would know, but I like to make it very, very brief. What I would like you to do—I am sure that you, being on this committee from the standing committee on resources development, have access to past recommendations when the Liberals were in opposition. Please, take a look at them. I have my 1984 recommendations in here and it is signed in here by some of the people who are not with us any more, because the people thought they were not doing a good job, so they got somebody else to try to do a good job. Now that you are in there, please, do a good job and fulfill your promises to the injured workers.

We do not bother with Queen's Park seven days a week, as big business does. We come here on June 1, or maybe on such a committee as this. We cannot afford to come here every day. It costs money and it is painful to come on crutches and to come in wheelchairs and with heart pacers, as I have. But in 1984, believe it or not, this committee made 40 recommendations. When I ??stared at them at home last night, I found out that there are 39 and three quarters still outstanding.

Please, I would like to cut it short. You people want to go home. I have to get to ??Oshawa too. Fulfill your obligations. You have a big majority. But I do not see why the Liberals should stall any more for us. Thank you very much.

Mrs. Smith: I am a little concerned about those of you who are standing at the side and the back. There are three chairs up here. Are you out of chairs? There are three up here and one over there.

Last year, we began our submission to you by stating our concerns that the Workers' Compensation Board would control its mounting costs by penalizing injured workers through cutbacks in the compensation system, rather than finding legitimate ways to reduce the unfunded liability. We strongly recommended that WCB costs and justice for injured workers are two distinctly different issues and should be kept separate. Controlling costs should not be at the cost of justice.

You can imagine injured workers' anger when they realized that our fears were justified and that 1987-1988 was going to be a year of cutbacks in their benefits. The new, sleek board was bowing to pressure from employers to cut costs, when the only legitimate way for the WCB to do that is through proper enforcement of health and safety legislation and through effective rehabilitation of injured workers. On November 9, 1987 the WCB introduced a new policy on subsection 45(5) regarding temporary, looking-for-work supplements and wage loss supplements, which amounted to the first serious cutbacks since 1915 and were the first indication of the direction the board

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was moving towards, a board concerned more with employers' interests than injured workers' interests. Coincidentally, this new policy was introduced shortly after the Peat Marwick study's report indicated that supplements were an area where costs had risen considerably.

Even though we have been assured by those in command at the board that there is no connection between this study's finding and the new subsection 45(5) policy, we remain unconvinced. There is other evidence to support our conviction. The WCB task force on vocational rehabilitation report recommended a complete overhaul in that area and while the WCB has indicated in its public relations statement that it accepts the general thrust of about 85 per cent of the recommendations directed at the board, Walter Majesky, co-chair of this task force, insists that the board has rejected 87 per cent of their recommendations.

~~And where does~~

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(Mrs. Smith)

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~~in that area. While the Workers' Compensation Board has indicated in its public relations statement that it accepts the general thrust of about 85 per cent of the recommendations directed at the board, Wally Majors, co-chair of this task force, insists that the board has rejected 67 per cent of its recommendations.~~

Where does the Minister of Labour (Mr. Sorbara) stand in all of this? He washed his hands of any responsibility for the subsection 45(5) policy change. While the Ontario Task Force on the Vocational Rehabilitation Services of the Workers' Compensation Board was commissioned by his party, the Liberal government, he has also abdicated his responsibility in this area by taking no legislative action even though the task force made 21 recommendations that required ministerial action.

Perhaps the real reason for Mr. Sorbara's hands-off approach is a hidden agenda. Rumours abound that the legislation the minister says will be in Orders and Notices soon will contain aspects of the Weiler wage loss pension system introduced in 1983 by the Conservatives and totally rejected by the then Liberal opposition party, the New Democratic Party, the Association of Injured Workers' Groups and thousands of injured workers themselves and subsequently withdrawn in the face of this opposition.

We now fear that the subsection 45(5) supplement cutbacks were paving the way for a possible Weiler pension loss system. Why no legislation and reinstatement rights so strongly recommended by the task force and desperately need by injured workers? We hate to believe we are being too cynical by suspecting this legislation may very well be introduced, but together with the hated Weiler system, ransoming rehabilitation and reinstatement rights—the spoonful of sugar) for the bitter pill of Mr. Weiler's already rejected pension system. This is completely unacceptable. Mr. Sorbara should stick to the positive and concentrate solely on comprehensive legislation regarding rehabilitation and reinstatement rights.

Our submissions today by case workers and injured workers deal with WCB administration issues, WCB cutbacks and other WCB issues, the Workers' Compensation Appeals Tribunal and the office of the worker adviser.

Maybe before I turn to Ellen, who is going to talk about the policy-making process, I will just read a couple of our recommendations for the reorganization of client services.

Basically, the WCB this year has completed the reorganization of its services to clients into integrated services units. Unfortunately, what we have found is that there are still major problems with delays. In the experience that we have had, the anticipated improvement in the speed of the decision-making has not materialized and, on the contrary, the delays in the process are worse now than they have been for a while.

Our recommendation in this area is that the board establish claim management time limits and set up an administrative mechanism for expediting the adjudication of those claims, which exceed the set limits, especially for cases where the worker is in urgent need of assistance.

In terms of the lack of co-ordination of services, there are problems with this recent ISU delivery model. The first is due to the fact that the

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ISUs are grouped according to the employer's geographical location. There is a group of permanently disabled workers who are very badly served by this new model and that is the workers with two or more claims. Therefore, they are falling within the jurisdiction of two different ISUs. This is often a problem for workers who are permanently injured in the construction industry and are subsequently unable to go back to work in that trade. As each ISU functions separately from the other, the adjudication of those workers' claims will often be dealt with sort of an inefficient way resulting in confusion and serious delay for the worker.

Our recommendation in this area is in order to ensure that the information pertinent to a worker is not scattered throughout different units, the board should take measures to assign the files of a worker currently served by more than one ISU to a single unit.

The second problem is that the ISU, contrary to what was promised by the board, does not integrate the various functions of services to clients in order to promote a team approach to the adjudication of claims. In our experience, the effects of reorganization on quality of services is quite limited from the point of view of injured workers.

In practice, the various decision-making functions of adjudicators and counsellors is still carried out as separately as before. This is of particular concern in regard to the provision of voc rehab services and financial assistance to workers during this period of rehabilitation. The claims and pension adjudicators are the ones who make decisions regarding the payment of benefits and the vocational rehabilitation staff will often be required to provide the information necessary to their decision-making. It is important, therefore, that there be meaningful consultation, and at this time it does not seem to be happening to the degree that it should. What we fear is that the vocational rehabilitation counsellor's role within the ISU will be a reduced one.

~~Our recommendation in this area is that the Web take measures to ensure that claims and pension~~

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(Mrs. Smith)

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~~regarding the payment of benefits and the Vocational Rehabilitation staff will often be required to provide the information necessary to their decision-making. It is important, therefore, that there be meaningful consultation. At this time, it does not seem to be happening to the degree that it should. What we fear is that the vocational rehabilitation counsellor's role within the ISB will be reduced.~~

1600

Our recommendation in this area is that the WCB takes measures to ensure that claims and pension adjudicators be required to obtain and consider information regarding vocational rehabilitation matters where this information is pertinent to their decision-making and where its decision is inconsistent with the general actions proposed by the vocational rehabilitation staff, that a rehabilitation assessment take place to resolve the dispute.

I now turn to Ellen Lipes of the Industrial Accident Victims Group of Ontario who is going to talk about the policy-making process.

Ms. Lipes: I am going to speak about the policy-making process. This year was marked by lack of consultation and communication between the board and the injured worker community. I am going to talk about three areas where we have noted great deficiencies. The three areas are as follows: the first one is changes and proposed changes in policy; the second is the corporate board and its relationship to its constituents; and the third is the updating responsibility of the board to manual subscribers.

As regards the first area of deficiency, changes and proposed changes in policy, I will talk about the supplement policy, the vocational rehabilitation policy and the external consultation process, which has recently been approved by the board.

The supplement policy. On December 1, 1987, manual holders were invited to a session held by the board to introduce us to the new supplement policy. The new supplement policy had been in force as of November 9, 1987. In effect, we were being invited to a fait accompli. The audience expressed its extreme disapproval over the lack of consultation. Henry MacDonald, the executive director of policy and program development, said that he would take the message back and that it would not happen again.

In late April, we received a slim document outlining the board's new strategy for vocational rehabilitation. Input was requested by May 20, which was a mere four weeks. No background documents were provided; simply an outline of four and a half pages with no content regarding the amount of resources that would be allocated or how hard the board would try to place injured workers. In response to vociferous opposition to this by Toronto case workers' groups and other representatives of workers and injured workers.

The date was extended somewhat and we were provided with a second document entitled Vocational Rehabilitation Strategy, which is a document that was presented to the corporate board. However, regretfully, we must say that the second document is a mere reiteration of the first document, but it just takes up more pages and still does not provide us with the substance of the new strategy. We presume that the board considered background documents, research and analysis. It had options and recommendations which came before it

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in its formulation of this new policy and we have yet to see them.

Dr. Elgie has requested our input in order to develop the full proposal. However, it is impossible to have meaning input without all of the above background documentation.

Third, I would like to talk about the external consultation program during the policy development process. Recently the board approved a new external consultation process. Originally, injured workers were not included as stakeholders. We objected to this and in response to our objections, we have been informed that injured workers and their representatives in clinics will be allowed to participate in some form, but once again our concern remains the same. We have no commitment from the board that we will be provided with relevant background papers, research and analysis papers, including options and recommendations, considered by the board in the policy-making process. We fear that this process will turn out to be an empty and futile one without this commitment to provide us with the documentation.

Our recommendation is that as regards new policy changes we be provided with materials, the above materials I have described that we require, and a reasonable time within which to make written submissions in response to the materials and that there be a subsequent opportunity for us to provide input on the board's draft proposal before it goes to--

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(Ms. Lipes)

~~... empty and futile one, without this commitment to provide us with the documentation~~

~~Our recommendation is that, as regards new policy changes, we be provided with materials, the above materials I have described and we require and a reasonable time within which to make written submissions in response to the materials, and that there be a subsequent opportunity for us to provide input on the board's draft proposal before it goes to the corporate board.~~

The second area of deficiency that I would like to discuss briefly is the corporate board. I will just touch on one of my points, due to a shortage of time that we have today, and I would request that you read the other points that I have mentioned in your own time. I will just touch briefly on the new confidentiality requirements approved by the corporate board of directors at its April 7 meeting. These new confidentiality requirements, we know that they were approved because we read about them in the April 7 minutes of the corporate board, and it says that they were approved. However, we have been unable to obtain a copy of them. We have applied under the Ontario Freedom of Information and Protection of Privacy Act, but to date we do not have a response.

We do understand, however, that under the new policy, discussions with constituents will be limited. We understand that the board members will not be able to divulge recommendations and options. Background papers may be provided if they are not marked "confidential." We are extremely concerned that this new confidentiality policy that the board of directors' members must follow will inhibit constructive interchange between the board of directors and its constituents. We are concerned that constituents once again will not be able to give constructive input, and that board members themselves will limit their own effectiveness in representing the interests of their constituents. So that we recommend that board members be permitted to communicate openly with their constituents and obtain their input.

The third area of deficiency is lack of updating by the board to manual subscribers. This is, indeed, a very serious area of deficiency. Recently we were sent the new board policies passed in the last year. Among them was the famous supplement policy, which you will be hearing more about, and the commutation policy and other new policies which were passed. Conspicuously absent were the guidelines to the commutations policy and, as well, to the supplement policy. The guideline to the supplement policy is called Addendum to Supplement Policy, Administrative Guidelines on the Work Adjustment Supplement.

The commutation policy guidelines are much more restrictive than the policy itself. In order for a representative to represent a worker properly, he must know what these policy guidelines say because they, in effect, tell you the way the board is going to apply the policy and, similarly, the addendum to the supplement policy tells you guidelines which apply to workers who are receiving the temporary supplement on November 9, which is the day that the new policy becomes effective. So different guidelines apply for those workers receiving the supplement prior to and including November 9, 1987. Those representatives who do not have these guidelines, cannot give proper information, and have not been properly informed about this policy.

Just as an aside, I would like to tell you that I, in fact, found the addendum at a phone booth at the board, which was lucky, because then I could

pass it around to all of my co-workers, but that was just fortuitous. Had it not happened, we might not know that it existed and would not really know the full impact of the entire policy and would not be able to represent our clients properly.

We recommend that a manual subscriber be sent all policies, policy guidelines and procedural guidelines, and that they be sent to us at least one week prior to implementation.

Last, what I would like to say in closing, is that the supervisor of policy publications has told me that she has been instructed not to release policy guidelines to people who call, and we find that this is a frightening precedent, and it must be stopped.

Mrs. Smith: Thank you, Ellen. Our next speaker is Marion Endicott of IWC and she is going to talk to you about cutbacks.

~~Ms. Endicott: 19005 hailed a new period, or as we thought, to the workers' compensation system.~~

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~~me that she has been instructed not to release policy guidelines to people who call and we find that this is a frightening precedent that must be stopped~~

1610

~~Mrs. Smith: Our next speaker is Marion Endicott, of Injured Workers' Consultants and she is going to talk to you about blocks.~~

Ms. Endicott: Cutbacks: 1985 a new period, or so we thought, for the workers' compensation system in Ontario and it included a new administration which was brought in which we believed was dedicated to improving operations and creating an open, consultative style.

What we are seeing are these effective administrators guided by pressure to reduce costs and in doing so they are finding legal tools to challenge the authority of the tribunal, as you will hear later, to duck the influence of the board of directors and, as I will be discussing, to revise policies in a way that leads to reduced benefits and services to injured workers.

In the past year we have seen a number of major policy initiatives which we expect will have negative consequences for injured workers. In some instances we have already seen these effects. In other instances, there has not been enough time yet to see the results. In contrast, we cannot say that we have seen any positive improvements in policy with the rather minor exceptions that transportation costs incurred by injured workers are now covered and a very tentative step towards improving the hearing loss policy. That has not been passed yet, but they seem to be making some moves in that direction.

I would now like to go through the major policy changes which have occurred in the past year. You will have heard about most of these through the press if from no other source I am sure but I think they are important to go through.

The first is the chronic pain policy. In July of 1987, the Workers' Compensation Board took the groundbreaking step of recognizing the medical existence and the compensability of chronic pain.

However, the policy and its implementation is so very cautious in its approach that it can actually be considered a negative policy. In other words, many workers will end up with fewer benefits than they would have otherwise received.

For example: Temporary total disability benefits will be terminated earlier in many cases, since the WCB will pay only for six months after the general expected recovery time for given injuries. The board has a chart. It has nothing to do with the injured worker's actual medical situation. They have a chart of expected recovery times. When you have reached that time, unless there is some extraordinary circumstance in your situation, you will be cut off temporary benefits and be assessed for a chronic pain disorder.

Instead of ongoing temporary total disability benefits, the worker will now receive, after the six months have passed, a pension rating up to a maximum of 30 per cent. This maximum includes any organic award. The basic requirement for entitlement for chronic pain is that the worker have "marked

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life disruption." This is simply, in our opinion, another term for totally disabled, since it includes such concepts as inability to work, social withdrawal and deterioration in personal hygiene.

With this threshold for entitlement either temporary total disability benefits should continue, especially if the worker is still under active treatment, or pension awards of up to 100 per cent should be granted.

The pensions are awarded on a one-year provisional basis. Not only is the chronic pain component of a pension made provisions, but any existing organic pension will be converted into a provisional award as well.

This would appear to put permanent awards into jeopardy. So far there are no anniversary dates for chronic pain cases so we have not seen the actual results but we certainly submit to you that it would make any worker hesitate before pursuing a chronic pain disability pension.

While we have many other disagreements with the WCB's policy on chronic pain, these are the points where we see actual cutbacks from the pre-policy service levels to injured workers.

I would now like to turn to the supplement policy which you have heard something of already. There are three components to supplements at the board. What we might call rehabilitative supplements, a wage loss supplement and an older worker supplement. I am addressing the rehabilitation supplement first.

Following fast on the heels of a financial study, the Peat-Marwick report of September 1987, which showed significant increases in supplement payments over the past 12 years, the WCB obtained a legal opinion that its interpretation of this section had been patently unreasonable. This was quickly followed by a major change in WCB policy; a decision on which the board of directors of the board agreed to delegate its authority to the administration.

The most startling aspect of the new policy is the introduction of deeming of future wages into a threshold test on entitlement.

Pensions adjudicators determine, at present as far as we can tell in a very haphazard manner, what jobs the injured worker might be expected to be able to do and what wages would be associated with such jobs. If the value of the average wage of those jobs, plus the . . .

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~~Pensions adjudicators determine, at present as far as we can tell in a very haphazard manner, what jobs the injured worker might be expected to be able to do and what wages would be associated with such jobs. If the value of the average wage of those jobs, plus the workers pension are equal to or more than the worker's pre-accident earnings, adjusted for inflation, the threshold will not be met. In other words, no supplement will be paid in these situations.~~

Previously any co-operating worker who was unable to return to their pre-accident employment was granted a supplement.

Now injured workers can be unemployed, unable to return to their previous work, and they still will not receive a supplement even while looking for suitable work.

An example from the compensation board's own training materials serves to illustrate the situation quite nicely.

The provide the example of a 28-year-old man with a right arm amputation and a 65 per cent pension.

They calculate that the post-accident earning capacity of this man is \$250 a week. The man is in fact unemployed, looking for work and hoping for some skills training to increase his marketability. As we all know from experience, employers are very reluctant to hire injured workers. *

When the value of this man's pension and the estimated earnings are added, they come to slightly more than the \$475 a week that he had earned prior to his injury.

Thus, this man would not pass the threshold test and will not receive a supplement.

Anticipating concern from its own staff about this kind of situation, the training materials go on to say: "You must be assured we are only applying the section appropriately."

The new threshold criteria also include the significance test. That is any wage loss which does show up from the calculations must be considered significant before a supplement will be considered. So far, we have little indication of how significant will be measured.

It must be understood and emphasized that the calculation of the wage loss is done, not on the basis of actual employment positions which the injured worker could actually apply for but on a theoretical basis, considering what kinds of jobs it is expected the worker could do, without regard to whether such jobs actually exist.

According to the WCB staff training materials, there are also strict time limitations now imposed on payment of the supplement. There is one year for job preparation. This is an area of entitlement which would usually be covered under section 54 and six months restriction on looking for work.

The WCB administration, at the upper level, says that these limits do not exist.

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The policy is still too new for us to see what the practice will be. Certainly, the board staff have been trained with these limitations in mind.

The WCB says that its statistics show that more workers than ever are receiving supplements. While we are glad to hear this news, we cannot honestly say that we expect these positive figures to last. The supplement policy is under considerable public scrutiny at present. We predict that once the attention has subsided the obvious consequence of the policy will begin to be seen in increasing volume.

Then we have the wage loss supplement: The legislation on the wage loss supplement was reworded in 1985 to take inflation into account so that these supplements would not be eroded over time. The effect was to strengthen the concept that the supplement was to be paid as long as there was a wage loss.

The new policy has reversed this and put a maximum of three to six months time limit on these supplements.

We have seen many cases in this instance where workers, some of whom had been receiving the supplements for years, have been cut off. This leaves them with unacceptably low incomes. The former, we have to say now, rehabilitation philosophy talked about not relegating injured workers to a lower economic plane. We are now seeing injured workers relegated to a lower economic plane all over the province.

Finally, in the area of supplements, we have the older worker supplement. It is interesting to note that the original guidelines developed on the use of the supplement, back from 1976 when it first came in, indicated that any worker who could not realistically be expected to return to any form of employment due to his compensable injury in combination with other social or health factors could receive a supplement until age 65, discounting for Canada pension plan. The WCB never used this guideline. However, it eventually began to implement it in another form for workers who were in their 50s in this kind of situation of being unable to return to work. In 1985, the legislators sought to strengthen the use of the older worker policy by putting it in the act.

When this was first done, the WCB readily granted these supplements to workers in their 50s and some even in their late 40s where all were in agreement that it was most unlikely that the worker could be successfully hired. In the last six months, we have seen a major tightening up. It appears that with only considerable advocacy will workers under the age of 57 receive older worker supplement.

As Lorraine has already mentioned, overall this policy change represents the biggest cutback that we have seen since 1915 in the area of workers' compensation in Ontario and we have to remind you that it was done under what we would submit to you is a rather questionable legal opinion and was ...

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(Ms. Endicott)

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~~As Lonnaine has already mentioned, overall this policy change represents the biggest cutback that we have seen since 1915 in the area of workers' compensation in Ontario. We have to remind you that it was done under what we would submit to you is a rather questionable legal opinion and was slipped by the members of the board of directors. They were asked to delegate their authority on this question because of the legal matter involved, and they complied with this request.~~

The next area of policy changes is the area of commutations. The board put in a new policy last spring and put in the guidelines on January 15, 1988. As Ellen has mentioned, this is one of the policies that we did not really hear of. It just came to our attention because injured workers began phoning.

It is not at all clear what the rationale is of the Workers' Compensation Board for the new wording of its policy. In the paper, we have the new wording, and I will not take the time to go through it now. It is not at all clear how it is intended to be distinguished from the previous policy. So far, the board has not given us that information, although we have requested it.

It does seem clear, however, from reading the guidelines—not the policy, but the guidelines—that the application of this policy represents yet another underhanded and significant cutback for injured workers. The guidelines specifically exclude home purchase except under special circumstances, new businesses, self-employment and immigration as valid bases for commutation requests. They also make it clear that most requests for debt clearances on vehicles will also be denied. All of these were previously among the primary uses of commutations.

The policy says that commutations are to be used for rehabilitative purposes. However, the guidelines say that there must now be no direct link between the commutation and employment. Rather, the commutation must be directly linked to reducing the effects of the disability or reducing the financial situation contributing to the disability, whatever that means. This requirement appears to propose that the worker's own money, the permanent disability award, will now be used, where in the past, additional benefits were or could have been granted.

Specifically two things:

1. Section 54 of the act says that the board may make expenditures to lessen or remove any handicap resulting from the injury. We are very curious how the WCB can distinguish commutations to reduce the effects of the disability from this section of the act which provides for additional assistance. Must the worker now pay for his own rehabilitation?

2. Psychological disabilities arising from an accident are eligible for compensation. The board's policy on psychological disability has identified problems which arise out of the prolonged nature of the disability, including financial hardship, to be compensable. Usually permanent disability pensions for psychological conditions are provisional in nature and often paid in lump sums. The new commutation guidelines suggest that this kind of psychological

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disability will no longer be compensable, but rather, treated "using the worker's own organic disability award."

In addition to virtually eliminating the accepted uses of the commutations, a further restriction was put on applicants. In order to have a request granted, they must be either already employed or have a firm job offer. The commutation continues to be identified by the board policy as something which is a rehabilitative measure. Yet it is, on the one hand, to have no direct connection to employment, while conversely, it is offered only to those who are virtually rehabilitated.

We have yet to see any commutations approved under this new policy. Some observers have suggested that with these guidelines in place perhaps we never will.

The final area of cutbacks in policy changes I would like to draw your attention to is on the board's new vocational rehabilitation strategy. It is generally accepted that a successful rehabilitation program is the hallmark of a successful worker's compensation system.

The Workers' Compensation Board was highly criticized for lack of meaningful success in rehabilitating large numbers of injured workers so the Ontario government appointed a task force to look into the matter in May 1986. The task force was tripartite in nature and was unanimously appalled by the insufficiency of services and the callous disregard of the emotional impact of the injury or disease on those being served. Eighty-four recommendations for improvement were made. Included in these recommendations were the recommendations that legislation should be passed to make rehabilitation a right and that legislation should be passed to provide for mandatory reinstatement. These were, in our opinion, the key recommendations.

Rather than take the opportunity to install a significantly improved rehabilitation program at the compensation board, the Minister of Labour (Mr. Sorbara) has handed the task back to the Workers' Compensation Board itself. The result is a WCB strategy which contains some possible improvements, but which falls very short of the recommendations of the task force and short of the expectations of injured workers in Ontario.

Our full critique is far too long to go into, but is certainly available to you.

In addition to the inadequacy of the board's proposed new strategy is the effect of the board's policy on supplements on rehabilitation. You are aware of the threshold criteria for supplement

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(Ms. Endicott)

~~...and short of the expectations of injured workers in Ontario. Our full critique is far too long to go into, but it is certainly available to you~~

~~In addition to the inadequacy of the Board's proposed new strategy, the effect of the Board's policy on supplements on rehabilitation, because of the threshold criteria for supplement entitlement. It appears that the same threshold criteria is being applied to rehabilitation services. We have seen a number of cases where rehabilitation services have been denied because the supplement was denied. Please bear in mind that according to section 54 of the act, there are no threshold requirements.~~

Although the administration denies it, the training materials given to the staff at the board indicate that strict time limitations will be placed on rehabilitation. Previously, there have been no time limits.

The training materials also make it quite clear that rehabilitation services will not be extended until a person has a pension award. The materials give the example of a man who will not be able to enrol in an education program because its starting date occurs a few days before his pension examination date. The reason for this, they say, is because the threshold test for supplements cannot be applied until the pension is determined. In other words, this man's schooling is going to be held up for six months to one year, depending on how long the course is, just in order for the board to catch up and do its pension assessment.

The administration also denies that this is the case. It seems, however, that the staff have been trained otherwise.

Included in our submission to you was a paper. It is called The New 45(5) Policy: A Handicap for Injured Workers. Due to shortness of time, I do not feel that I can go through it in any great depth with you, but I would like to point out a few things. It is the following paper after the one on cutbacks. It goes into more detail on the virtual elimination of the wage loss supplement and the effect on the wellbeing of injured workers that this will have, relegating them to a lower status and economic plane. It talks about the problem of how the rehabilitation counsellors will be significantly removed from the actual rehabilitation process because in applying the subsection 45(5) policy, it is the pensions adjudicators who will decide whether or not an injured worker will benefit from a rehabilitation program or not.

As the paper says, what we end up getting is a process whereby vocational rehabilitation is not decided primarily by a rehabilitation specialist but by a pensions adjudicator whose specialty is not vocational rehabilitation but the application of the new 45(5) cutback policy forced upon him or her by the new Workers' Compensation Board administration. It also goes into more detail on what I have already pointed out, that through sort of the back door, new artificial thresholds have been applied to eligibility for rehabilitation.

Another major concern through the 45(5) policy is that vocational rehabilitation will turn from being rehabilitation to vocational estimation. As a result of the new 45(5) policy, rehabilitation will be shifting its focus. Instead of concentrating on helping to find the job for the worker, as was stated in the former philosophy, considerable resources will be wasted in

the exercise of estimating the worker's post-accident working capacity. A lot of time will be spent in gathering evidence from rehabilitation counsellors and agencies with respect to the estimation of the worker's abstract capacity to work instead of concentrating help for the purpose of finding a concrete job.

In conclusion in the area of cutbacks, the board has made it clear that it is committed to reviewing all of its policies. If the present trend is maintained, we will soon have a compensation system gutted of justice, however rendered. Even in Peterson's Ontario, the level playing field is already being established even though the free trade agreement has not yet been sanctioned.

We have a number of recommendations coming from the cutbacks proposal, and I will let you look at them at your own time. However, there are two that I would like to point out. One is that the Minister of Labour (Mr. Sorbara) must take responsibility for the overall direction of the compensation system, including how the WCB interprets and applies legislation. As well, the current supplement policy which came into force on November 9, 1987, must be terminated. Any new policy proposal must receive full discussion of the WCB's board of directors and it must be passed by the board of directors.

I gather we have a number of injured workers who may want to let you know how they are being affected by these cutbacks, and I turn back to Lorraine.

Mrs. Smith: Thank you, Marion. You probably noted that we have titled our brief Plus Ca Change Plus C'est La Meme Chose, and there is a reason for that. The reason is that when we went back through all of our briefs that the case workers have presented to the standing committee year after year after year, and when we went...

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(Mrs. Smith)

~~Plus Ça Change Plus C'est La Même Chose, and there is a reason for that. The reason is that when we went back through all of our briefs that the same workers have presented to the standing committee year after year after year, and when we went through these that you have made recommendations to—some of you have been on this committee for a while and some of you are new—it is extraordinary how many of these problems are still the same. The areas which required change, the major areas, are still there, and injured workers can stand up and tell you—even though we have been working for them and you have been working for them—the major changes that are needed that will make their lives better just have not happened.~~

1630

There is one thing, automatic indexation, that has happened, and all the others are still outstanding. I think that at this point what I would like to do—because you have our submissions here and you can listen to us talk, but I think it is really important to get a reflection of how serious the problems are. If I stand up, can everybody hear me?

Mr. Chairman: Just before you start that, Lorraine, have you worked it out with the northern Ontario injured workers and the southern Ontario injured workers about time-sharing?

Mrs. Smith: I have spoken to Steve, and he needs about half an hour, which would give us 15 minutes more. I do not know about the southwest. Is John Slinger here?

Can you give us an indication of how much time you would require?

Interjection: I think there is an individual from Welland here ??

Mrs. Smith: You would need half an hour, so an hour. And you are going to six o'clock?

Mr. Chairman: Yes.

Mrs. Smith: I could try to do this part in 10 minutes, and then if we wrapped it up by five o'clock, we would have half an hour for each other group.

Mr. Chairman: There are two other groups though. There is the northern Ontario Injured Workers, the Southern Ontario Injured Workers, and now we are talking about the southwestern Ontario, so that is three other groups.

Mrs. Smith: I think it is the same thing. Southern and southwestern is the same thing, so there are two other groups.

Mr. Chairman: OK, sure.

Mrs. Smith: What I would like to do is for the standing committee here—these are MPPs from all three political parties who sit in the Legislature every day, and they hear our brief on what is wrong with the compensation system, but I would like to show them just how serious the

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problem is. So please, everybody who is living on just his pension—no wage-loss supplement, no looking-for-work supplement—everybody who is only living on his WCB pension, stand up please.

[Remarks in Italian]

Mrs. Smith: I am just going to explain a little bit first. If you could please stay standing. I know it is hard on you, but stay standing.

It is interesting that what I tried to do before we came in was to take a list of these people and find out the percentages of their pensions and how much they were living in, and I tried to divide them: "Which ones of you have been cut off a wage-loss supplement? Which ones of you have been cut off a temporary supplement? Which ones cannot work but cannot any"—it became very confusing because, as you can see, there are a lot of people here. So I thought the easiest way to do it would be to show you how many people here are living on their WCB pension with no supplement and this will give you just a brief cross-section. I got up to 20 and then I just stopped doing it because it was getting confusing: 10 per cent, \$137 a month; 9.5 per cent, \$180 a month; 35 per cent—wow—\$365 a month; 20 per cent; 12 per cent, \$224 a month; here is a lucky one—66.5 per cent, \$700.00 a month; 30 per cent; 15 per cent, 20 per cent; 40 per cent; 10 per cent; 33 per cent; five per cent; 30 per cent; 10 per cent; 10 per cent; 13 per cent; 20 per cent. As you can see, most of these people are below 30 per cent of either 75 per cent of their former gross salary or 30 per cent of 90 per cent of their net salary.

I am going to ask all of these people who are standing, who are living on their WCB pensions with no supplements, how many of you people, if we could give you a suitable...

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(Mrs. Smith)

~~are below 30 per cent of either 75 per cent of their former gross salary, or 30 per cent of 90 per cent of their net salary.~~

~~I am going to ask all of these people who are standing, who are living on their Workers' Compensation Board pensions with no supplement from many of you people, if we could give you a suitable light-work job, how many of you people would take that job?~~

Mr. Buonastella: [remarks in Italian]

Mr. Chairman: Lorraine, Hansard is having enormous difficulty. Can you hold the mike? If you would hold the mike, then Hansard could pick this up.

Mrs. Smith: Can you raise your hands, everybody sitting in this room, standing or sitting—Everybody can sit down. Thank you.

Everybody in this room, if we could find you a suitable, light-work job, how many here—put your hands up—want to work at a suitable light-work job?

How many people are actually working? One, two, three, four people are working.

I think that really says it all. All the people who stood up are mostly living on less than 30 per cent pensions without supplements.

When I ask how many people would like a suitable, light-work job, you can see most of the people in this room would like one. When I ask how many people are actually working in a job like that, there are three or four people.

We have one injured worker here today whose name is Jose Soares. He would like to just tell you a little bit about why injured workers feel so strongly that the number one demand, the one thing they want to see legislation for as fast as possible is the rights to a job, to a suitable job enshrined in legislation, and the right to rehabilitation of an injured worker with permanent disability enshrined in legislation. I would like Jose Soares to speak to you now.

Mr. Soares: Good afternoon, ladies and gentleman. I am not a man of fancy words. What I have to say here I will say in a very simple way. My name, like Lorraine said, is Jose Soares, and I am an injured worker. I come here today to do my best to help to win the battle against injustice, the same injustice which is done to injured workers every day of the year.

I would like to start to say a few words about rehabilitation. As you know, now only the WCB decides who gets the rehabilitation service, and this is not justice. This is not fair. This is very bad for the injured workers.

Injured workers who cannot return to their jobs because of their disabilities want to see a law to ensure that they get rehabilitation from the WCB. We do believe that every injured worker should have the right to rehabilitation.

Also, I would like to say something about another great injustice which is done to the injured workers. I would like to talk about mandatory

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??rehiring. I would say to you, let us force this government to bring up a law which would give us back our jobs and our dignity.

As you know, right now there is no law which can prevent us from getting fired—yes, gentlemen, fired—after an accident at work. This happened to me. I myself gave 12 good years of my life working for this company. I did not kill. I did not steal. I did not create any kind of problems while there. I, for 12 years, always gave the best of my ability—

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(Mr. Soares)

~~...you gentlemen, fired after accident at work. This happened to me. I myself
give 10 good years of my life working for this company. I did not kill. I did
not steal. I did not create any kind of problems while there. I taught for 10
years to always give the best of my ability to this company and after all that
time and the good and honest service I was fired. Yes, I was fired, because I
had the bad luck of having an accident while working there. This is not
justice. This is not fair. This is not human.~~

1640

But this does not happen with me only. This happens with thousands and thousands of injured workers every year. We have to fight for justice for the injured workers. Look how many there are here today. We ask this government to make mandatory rehiring a law in this province. We ask this government to look at our side and our needs too, because only the government has the power to make all these companies open their doors to the injured workers and give them a job which they will be able to do, and most important, give the injured workers their self-respect and dignity which they deserve so much.

Inside of my heart I have a good feeling that in the near future this government will see the light of justice and make mandatory rehiring a law in this great province of Ontario. We, the injured workers and our families, we beg you just to do that. God bless you. Thank you very much.

Mrs. Smith: Thank you very much Jose. Susan Howlett wants to talk a little about board doctors.

Ms. Howlett: This is one area that we would be happy to see cutbacks at the Workers' Compensation Board. This is the only area. We feel basically that board doctors should be eliminated from the staff of the compensation board. And I would like to outline--

The Workers' Compensation Board continues to ignore past standing committee recommendations concerning board doctors. None of the recommendations made over the two years have been implemented. Just as a reminder I have listed them at the end of my submission here.

Board doctors continue to exert unacceptable power in determining the fate of injured workers. Board hearings officers and claims adjudicators continue to rely too heavily on the opinion of board doctors in reaching a decision, despite sufficient supportive medical evidence on file from the injured workers' own treating doctors.

In our submission last year, we noted some change in the weight given to the board doctor's opinion as a result of the Workers' Compensation Appeals Tribunal decisions. We observed that while this had influenced some decisions at the board level, we noted that these decisions were few and far between. Over the past year however, the impact of the Workers' Compensation Appeals Tribunal seems to be waning. The board is now ignoring or outright challenging decisions through section 86n of the act in a bold and unfettered manner.

With regard to the role of the board doctors in determining pension disability levels, they now enjoy a virtual monopoly. Appeals tribunal decision 915 gave its blessing to methods used by board doctors under the

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"meat chart" rating schedule. This has had, and will continue to have, a devastating effect on any attempt by injured workers to appeal pension levels. Workers may be granted the right to a reassessment by the hearings officers or the WCAT panel only to be sent back to the board to be re-examined by the same board doctors for a final determination. This seriously calls into question any independent appeal process. There should be immediate legislative review of this situation as there is an erosion of the appeals process.

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(Ms. Howlett)

~~be re-examined by the same board doctors for a final determination. This seriously calls into question any independent appeal process. There should be immediate legislative review of this situation as there is an erosion of the appeal process.~~

A second concern regarding board doctors and pension assessments is the trend we see towards a cutback in the awards given, the level of those awards and reassessments. The average pension granted has decreased from 15 per cent in 1981 to 12 per cent in 1986. Despite this, the Peat and Marwick cost study report targeted the increased propensity to award pensions and a trend of increasing awards through reassessments as areas of major cost increases, along with pension supplements, rehabilitation and temporary benefits.

With the virtual monopoly given to board doctors now buttressed by the Workers' Compensation Appeals Tribunal, such cutbacks will be easy for the board to implement without even having to initiate any policy changes.

The disabilities of injured workers are real medical findings; disabilities which injured workers painfully experience day to day. Pension awards must not be determined by economic or political agendas but should reflect a just award to reflect the true nature of their disabilities. We feel the only way to truly achieve this goal would be to abolish the use of internal board doctors.

At the end of my submission, I have reiterated our recommendations. There are 16 from last year and we have added the additional one concerning the erosion of the appeal process. There are also either outstanding recommendations concerning board doctors from the standing committee in the last two years. I would also point to page 49 in the brief which deals with further outstanding issues from our brief of last year which have also not been implemented regarding other issues, such as survivor's benefits.

Ms. Smith: Marion Endicott wants to ask you one question and the question is, why resurrect Mr. Weiler's pension law system?

Ms. Endicott: Usually, we come to you with the misdeeds of the board over the past and we feel that the question of Weiler being resurrected, although it is ahead of us, is so urgent that we have to speak to you on it today.

Those of you who were members of the provincial Parliament in 1983 or who were following the developments at that time will remember that there was a huge storm of opposition from injured workers and trade unionists to stop the Weiler, as we call it, pension law system. Because of that, it was dropped. But we understand that the government is planning to reintroduce it, in fact, at the end of this month and we would like to take this opportunity to let you know that injured workers simply will not abide by having Weiler reintroduced.

We also like you to know that we think that the board would be well-advised to stay away from it. It proposes to create an administrative nightmare and we do not think it will serve the interests of anyone in the end.

I do not have much time but I would like to quote one thing from this paper that is already in the materials that you have that I think is useful.

It is a quote from the commission of inquiry into the compensation board done by Mr. Justice Roach in 1950 and it comments on the Ontario Workers' Compensation Board's past experience with an actual wage loss system.

"From 1915 to 1917, the experience of the board indicated that the actual wages received or the failure to earn any wages after the accident was not a satisfactory guide in determining the extent of the loss of earning power. The attitude of both the workman and the employer after the accident was a factor of considerable importance in determining the extent of loss. Some workmen were more anxious than others to become rehabilitated and overcome or minimize their handicap. It was suggested that some employers would re-employ the workman at a wage rate close to the rate prior to the accident for specific purpose of cutting down the pension and then, some time after the board had fixed the amount of the pension, they would lay the workman off on some pretext. The workman might then find it difficult or impossible to find another job on account of his physical disability and the workmen who had not been re-employed by their former employer might have similar experiences. General economic conditions had much to do with the chances of the workman getting a job and with his earnings if he did get one.

~~"If the partially handicapped workman has the courage, resolution and faith to overcome his disability to the point that his earning capacity~~

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~~might have similar experiences. General economic conditions had much to do with the chances of the workman getting a job and with his earnings. It is not~~

"If the partially handicapped workman has the courage, resolution and fortitude to overcome his disability to the point that his earning capacity is not, at least for the time being, adversely affected thereby in my respectful opinion it would be neither economically or socially sound to take from him the benefits of his own successful efforts to rehabilitate himself. His own morale is a matter of importance not only to himself, but to all those with whom he associates including his employer."

That was a sum-up of Ontario's past experience in administrating the wage loss system. I guess the only other point to make is that the Ontario government itself commissioned Professor Ison, who is considered to be Canada's foremost in compensation matters, to do a critique of the proposed wage loss system and Professor Ison simply condemned it in his report and in our submission to you today we have a number of excerpts from his remarks.

Perhaps the most important one is this:

The previous mentioned problems with the system "is not the only civil liberties issue. Other encroachments on civil liberties would also arise out of the ctual loss of earnings method. One is that the position of a worker, including his medical condition, his work, and his work opportunities would be the subject of continuing investigation by the board. It would be almost like a sentence of perpetual probation."

Basically this is the problem. The injured worker is never given independence, is given a lifetime association with the compensation board, with his life continually scrutinized, with decisions being made all over the place of whether something is related to his compensable injury or not and the amount of money that he receives from the board fluctuating constantly with no ability for the injured worker to plan his financial resources in any kind of consistent or reliable way.

There is a lot to say on it, but due to shortness of time, I will simply read out to you our recommendations: that the present government should not revive Weiler's pension loss system; the Workers' Compensation Board should use the present supplement legislation to provide ongoing wage loss supplements to injured workers; and mandatory rehiring legisla~~tion~~ should be introduced as soon as possible.

Mrs. Smith: We have one more speaker and thst is John MacKinnon who is a lawyer with Kensington-Bellwoods Community Legal Clinic. He is going to speak to you about the Workers' Compensation Appeals Tribunal and the office of the worker adviser.

Mr. McKinnon: Perhaps first, I will just draw your attention to a couple of the points that we made on the office of the worker adviser. I have seen figures indicating they have more 3,000 cases on their waiting list and there has been criticism directed towards that office that they are ineffective or inefficient. It is our position that is not the problem at all.

If you look at the number of injured workers who have been contacting

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that office, the figures that I have for the last fiscal year of the workers' adviser office is that there has been more 15,000 injured workers making contact there and these are generally people who cannot get help elsewhere. The legal clinics are often booked up. The MPPs are often overtaxed already. These are injured workers who need assistance and who cannot get it.

When you look at the resources available, I think there are 44 workers' advisers in the province to deal with those 15,000 injured workers who need help. You cannot blame the workers' adviser office for not being effective with those resources. It is like giving injured workers a spoon to move a mountain.

If there are any grounds for criticism of the workers' adviser office, it is our position that they are really structural. The workers' adviser office is not independent from the Ministry of Labour. It has the same boss as the Workers' Compensation Board. It is hamstrung by political concerns because of its connections with the ministry that is responsible for administering the Workers' Compensation Board.

The first step that is necessary to address this concern is to have an independent workers' adviser office is that it be set up with an independent community-based board of directors that includes people who are representative of injured workers' interests.

Also, we are concerned that the workers' advisers office ought to be free to inform the injured workers that it deals with of events and developments in workers' compensation. It is a fact, for example, that workers' advisers were criticized for attempting to publicize Injured Workers Day last year and it is a fact that workers' advisers have been criticized for their zealous opposition to the board's use of section 86n in reviewing chronic pain claims and the fact is that they do not have the mandate to make contact with their injured worker clients about very important policy and procedural changes that directly affect them.

~~I do not believe the workers' adviser~~

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(Mr. McKinnon)

...ation of (a) in reviewing chronic pain claims. The fact is that they do not have the mandate to make contact with their injured workers clients about very important policy and procedural changes that directly affect them. I do not believe the Office of the Worker Advisor was permitted to tell its clients about this presentation here today. Injured workers have got to have a right to know of the issues and events that affect their lives. In order to set up a system where they can have that form of representation there has to be some independent body with a community-based board of directors and members representative of injured workers running the Office of the Worker Advisor. It ought to have a statutory mandate to inform injured workers of community events and developments in Workers' Compensation that can affect their futures.

I would also like to draw your attention to some concerns, sorry—

Mr. Wildman: Can I ask just a short question? Is it not the case that the Office of the Employer's Advisor can, in fact, give that advice to their clients?

Mr. McKinnon: Well it is my understanding that the Office of the Employer's Advisor is actively lobbying with employer's groups and raising those issues. This is what I am told by other people. It is my understanding that, for doing similar things, the Office of the Worker's Advisor has been criticized.

On the Workers' Compensation Appeals Tribunal, in a nutshell, our concern is that in many respect the tribunal appears to be hamstrung by administrative concerns, concerns for administrative issues at the Worker's Compensation Board and these are concerns that are often raised by employers who are fighting claims by injured workers. The increasing deference that is being shown at the appeals tribunal towards the WCB is symptomatic of a bias towards employers that is creeping into the system. If the credibility of the appeal process is to be maintained, it is necessary to take some steps to reverse this trend and ensure the independence of the tribunal. Our concern is that we may have a bit of a lemon here; something that looked great on the drawing board and looked great in the showroom but now that we are out on the road the appeals tribunal might not necessarily take us where it is supposed to take us.

There are some specific problems that we have mentioned in our brief. The first one is the problems with the pensions test case. We have waited more than a year for the leading case on pension assessment and it leads no where. Just to give you some idea of the about face that the appeals tribunal has made, just in that one case; back in December 1985, when they were working out the preliminaries of the pensions test case, they asked the question, "Does the appeals tribunal have open to it the option of a reassessment by board doctors?" Their answer was, "Presumably not."

When you look at the bottom line of decision 915 the leading case on pensions, one sentence says it all. In the decision they decided, "In short, it is apparent that only another member of the staff of medical examiners in the Board's Impairment Rating Section is equipped to give an opinion as to the correctness of a particular pension assessment." It is a complete aboutface. The answer to injured workers who appeal their pension levels to the WCAT is

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to send them back to WCB doctors to have them rated again by using the same groundless rating schedule. That was another discovery made by the appeals tribunal in decision 915, that there was no scientific or empirical basis for the board's rating schedule. The general theme of decision is that faced with two possible interpretations of the act the appeals tribunal seems to be choosing the one that is designed to appease the board, the WCB.

Another problem that we raised is a problem with the retroactivity of benefits. We waited another year after decision 915 for the final part of the decision that deals with the entitlement to benefits for a compensable chronic pain condition. In the end, the appeals tribunal accepted the employers concerned. To protect the WCB and hence the employers rates, there must be an arbitrary compensement date before which there is no compensation for certain compensable disabilities. This is a purely political choice which we see as serving to protect powerful economic interests of employers groups. It is not a relevant or a valid basis to deny compensation for a compensable condition.

If a court refused to award compensation for some type of an injury because of the potential that similar claims would hurt the insurance industry, there would be a huge outcry. The same thing ought to be happening here with the appeals tribunal. The crowning irony of it all is that we understand that there was a recent decision by the corporate board at the WCB to consider reviewing decision 915 under section 86(n). So, despite all its efforts to appease the board, it seems to be subject to review by the board itself.

Another concern that we mention was the problem of legalistic procedures at the appeals tribunal, because in many respects the appeals tribunal has begun to resemble a court of law. There is a written request for leave to appeal, written case description, rules limiting changes and additions to the case description, rules limiting postmonments, rules limiting the presentation of new evidence at the hearing. The whole procedure intimidates people who do not have the

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(Mr. McKinnon)

~~... many respects the appeals tribunal has begun to resemble a court of law. There is a written request for leave to appeal, written case description, rules limiting changes and additions to the case description, rules limiting postponements, rules limiting the presentation of new evidence at the hearing. The whole procedure intimidates people who do not have any legal training. The tribunal is becoming a forum where lawyers feel comfortable and other people do not. It is not hard to see who benefits from a system where access to the appeals tribunal is perceived to depend on having access to legal counsel. Injured workers, by definition, are economically disadvantaged and do not have the resources to get legal counsel. We think that the rule making authority of the tribunal should be subject to a concern to accomodate appellants who do not have legal representation.~~

1700

Another problem that we mentioned in our brief is the problem of appeals from the old appeal board. The WCAT was created in order to solve a serious problem. The problem was that the process of appeals of the WCB's old appeal board was no good. The appeal board commissioners who decided the cases were not independent of the WCB. They were showing a superficial appreciation of the issues and a virtually complete reliance on the policy and decisions made at the WCB. Yet the appeals tribunal is not anxious to hear the appeals of those injured workers whose appeals have been disposed of by the old appeal board. Although the appeals tribunal can allow an appeal to proceed if there is good reason to doubt the correctness of the appeal board decision, the appeal tribunal has chosen to take a very narrow and legalistic interpretation of the right of appeal.

It is our position, from a commonsense point of view, that if the appeal was decided by a board that is not independent on the WCB and if an independent body like the appeals tribunal might have reached a different decision then there is good reason to doubt the correctness of the old appeal board decision. The WCAT position is the opposite. The WCAT takes the position that it is not enough that the WCAT might have decided the case differently. Its position is that the tribunal cannot review the evidence to determine whether it might arrive at a different conclusion. This offends commonsense and it offends injured workers. Who benefits from administrative convenience that limits the number of appeals allowed? It is like the arbitray limits on retroactive benefits in the pensions test case, as an example of the tribunal tendency to favour the protection of an employers economic interest at the cost of failing to correct past injustices by the WCB against injured workers.

We have asked that section 86(o), the leave to appeal section be amended to make sure that every injured worker whose case would have been decided differently by the tribunal have the right to an appeal to the tribunal.

There is another problem dealing with employers access to files. Section 77 of the act purports to recognize the worker's interest in confidentiality of the documents on file. If the worker objects to documents being released to the employer, he can appeal it. In fact, there is almost no respect for injured workers confidentiality. The WCAT, to a large extent, is serving as an apologist for the board's decision to release documents. The act does not give the WCAT any power to specify any reasonable or appropriate limits on information that it decides to release to employers. The act does not give the

~~Mr. McKinnon~~ Mr. McKinnon

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WCAT the authority to enforce any orders that it might want to make about release of information. It is a powerless body in those cases.

I also wanted to briefly mention section 21 of the Workers' Compensation Act, which is a section that allows an employer to send an injured worker to a physician who is selected and paid for by the employer. If the worker disagrees, he has the right of appeal to the WCAT. In our submission, first of all, this section is an enormous waste of time. The illumination of section 21 and the employer paid for medical assessment will help to cut down overload and delays at the board and at the WCAT.

Second, it is an unnecessary provision; there are ample mechanisms in place for the decision makers to get all of the medical information they need without introducing an employer paid-for medical assessment.

Third, it is a serious infringement on the privacy and dignity of injured workers and when it is not necessary to get the information to the decision makers then it should be left behind.

Fourth, it is alien to the philosophy of a no-fault and nonadversarial compensation system that is already becoming too adversarial. It is improper and out of place to introduce employer paid for medical examinations. We have recommended that section 21 be appealed.

The last point that I wanted to deal with, is the problem with the section 86(n) reviews. Section 86(n) of the Workers' Compensation Act, allows the WCB to interfere with an injured worker's appeal to the appeals tribunal. After an injured worker has appealed this case at the highest tribunal and won it, the board can review this decision and send it back to the WCAT. It makes a mockery of anyone's sense of justice, to see that an injured worker can win an appeal at the highest level and the WCB can just say no. Apparently, the WCB has to...

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(Mr. McKinnon)

~~... when an injured worker has appealed his case to the highest tribunal and won it, the board can review the decision and send it back to the Workers' Compensation Appeals Tribunal. It makes a mockery of anyone's sense of justice to see that an injured worker can win an appeal at the highest level and the Workers' Compensation Board can just say no. Apparently, the WCB has only declare that an issue of general law and policy is involved and it can stop the payment of benefits and it can send the case back to the WCAT without even holding a hearing. The whole procedure under section 86n in our submission is a quagmire. It says that when there is an issue or a question of general law and policy involved--well, what is a question of general law and policy? The WCB can develop a policy on anything it wants to, from the number of bathrooms in the Workers' Compensation Board office. That does not necessarily make it an issue that they can use to stop the payment of benefits to an injured worker. And when should hearings be held? The WCB believes it does not even need to hear injured workers. I am involved with a group of 14 injured workers who have won compensation for disabling chronic pain conditions at the WCAT and the WCB has decided to review these decisions and to stop their benefits and there has not been a single hearing held yet for the 14 injured workers. Who has the final say in all this process? The WCB thinks that it has and it wants the Workers' Compensation Act amended to make that clear. The WCAT does not necessarily agree. The fact is that if the WCB has the power to order changes in appeals tribunal decisions, then the whole appeal process is frivolous. The fact is that now section 86n is being used by the WCB in a power struggle with the appeals tribunal, and injured workers are being sacrificed as an excuse for the WCB to use section 86n on its favourite issues.~~

Even if the board and the appeals tribunal have to have their political power struggle, it is certainly not necessary in all of this to sacrifice the appeals of injured workers like pawn in the fight. It is our recommendation that you abolish section 86n because it undermines the independence of the WCAT, it defeats the purpose of an appeal system and it produces results that are offensive to common sense and to common justice.

Mrs. Smith: Thank you, John. Mr. Chairman, I will take about three minutes more to wrap up and that is it.

Committee, we have talked about the reorganization of client services and how it has clogged up the decision-making process and undercut the role of the rehabilitation counsellor. We have talked about the WCB policymaking process and how it is essential that injured workers and their representatives be informed about the agenda for policy change and have some input into that process.

We have talked once again about the excessive and unnecessary reliance on board staff doctors and how their role can be reduced and even eliminated to produce a fairer decision-making process. You have heard us talking about the new policies and the new board and how we feel they are really nice wrappings for empty packages and as far as we can tell, they seem to indicate cutbacks. I wish we were wrong, but we do this every day. They seem to indicate cutbacks rather than improvements for injured workers.

We have talked about Mr. Weiler's pension reform and how it is really a pension loss system and needs to be rejected once again. Injured workers hurt 24 hours a day. Mr. Weiler's wage loss system indicates that they hurt eight

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hours a day and they only would be compensated for their loss of wages and be constantly tied to the board with endless bureaucratic tangles. Their permanent pensions would end at 65.

You have heard us talking about the Workers' Compensation Appeals Tribunal and how its independence is being destroyed by the WCB and its use of section 86n and how we are seeing a thinly veiled employer bias in many other decisions. You have heard us talk about the office worker adviser and how the waiting list problem is really not a problem with them. It is a problem with the WCB system, and how the office of the worker is hamstrung by its lack of independence from the same ministry that administers the Workers' Compensation Board.

You may ask us—we hope that you would ask us, at least some of you—what can we, as MPPs, as legislators, do about all of this? All these areas require some sort of legislative action or your direction. But we are asking you to do two important things first. In my introduction, I spoke about our fears that rehab and reinstatement rights would be brought in as a package, a lump of sugar, the sweetener with this Weiler pension loss system that was once ...

R-1710 follows



(Mrs. Smith)

...First. In my introduction, I spoke about our fears that rehab and reinstatement rights would be brought in as a package, a lump of sugar with a sweetener with this Weiler pension loss system that was once opposed in 1983 for very good reasons. Regarding this pension loss proposal, Liberal MPPs rejected it in 1983. The Association of Injured Workers' Groups rejected it in 1983. The New Democratic party rejected it in 1983, and thousands and thousands, some say 3,000, some say 5,000 injured workers came to Queen's Park in 1983 and told the Legislature they did not want this system. There must be some good reason why this system is not a good one if that many people were opposed to it. And the Conservatives withdrew Mr. Weiler's proposed pension loss, which we call it, wage loss system, in 1983 because of all this opposition.

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I have here before me two documents. One is Professor Weiler's latest permanent partial disability alternative models for compensation, a report submitted to William Wrye, Minister of Labour, December, 1986. It is basically the same system. It is a bit reworked. It is a bit rehashed. We are asking you to do one thing; drop it again, please.

The positive thing that we are asking you to do is to read this report if you have not already. I am sure that most of you have at least read parts of it. It is an incredibly moving, profoundly thorough report and I might add that the people who were on this task force were from all political stripes and from all walks of life. It is not a partisan document. What they were recommending were many, many, many recommendations. What we are asking you to do is do—there are 21 recommendations in here requiring ministerial actions or government legislation. We are asking you to do one thing; concentrate on this. These people need their dignity back. And they need their dignity back by getting back into the workforce. They are asking you to do one thing; legislate mandatory rehiring, reinstatement rights, whatever you want to call it. Please find a way to get them meaningful work. These people with permanent disabilities who cannot find it on their own, please get them back into the workplace, legislate it.

One more thing before we close.

Interjections.

One more ?? workers. Hello. We have two more injured workers' groups that are scheduled to speak here today. We have Steve Mantis who has travelled all the way from Thunder Bay to speak on behalf of all the injured workers from the northern province. And it would be wonderful if many of you could stay and listen to his presentation as well. After that, there are people speaking from the southwest of Ontario and southern...

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(Mrs. Smith)

~~We have Steve Mantis who has travelled all the way from Thunder Bay to speak on behalf of all the injured workers from the northern part of the province. It would be wonderful if many of you could stay and listen to his presentation as well. After that, there are people speaking from the southwest of Ontario and Ontario. Please, if you can, stay and support them as well.~~

Mr. Chairman: Thank you, Lorraine, and your group very much. You have done us a service with the thoroughness of your brief. Needless to say, you have done injured workers a service the way you have presented your brief as well. We very much hope that out of these hearings will come some useful recommendations. None of us live in a dream world. We know the reality of affecting changes to the Workers' Compensation Act, but, on the other hand, that does not mean that we do not keep trying.

You are quite right. We anticipate a new or at least amendments to the Workers' Compensation Act very shortly. We have not seen a bill yet. None of us have because it has not yet been introduced into the Legislature for first reading. If it is introduced in this spring session, then it is also likely it would be referred to this committee for public hearings and for clause-by-clause debate. If that happens, you can be assured that we know where to find you and that you and the other organizations would be asked to help us consider those amendments. Thank you very much.

Mrs. Smith: You would be having public hearings then.

Mr. Chairman: Yes. The next group is from northern Ontario. We have Steve Mantis and George Caissie from the Thunder Bay injured workers' support groups. Gentlemen, welcome to the committee. I do not know who is the main spokesperson, but whoever it is, would you go ahead and introduce the others?

THUNDER BAY & DISTRICT INJURED WORKERS SUPPORT GROUP

Mr. Mantis: Yes. My name is Steve Mantis and this is George Caissie, the president of our group, the Thunder Bay & District Injured Workers Support Group.

I feel really put on the spot here. I think I have 20 minutes to try to describe the concerns that we have in northern Ontario and it is impossible. I feel really bad that I am cutting off people who are telling you the way it really is because that is the way it really is. People are out there living on \$150, \$200, \$300 a month. I really do not think that is what you want. I hope you read the presentation. I was planning to read it, but there is not the time right now.


I see some real problems here and I do not really understand what is going on. I read the act. I read section 45 that deals with permanent pensions. It says to me, "A person has a permanent pension. They get rated for that pension and get an appropriate amount of money." That is a real controversial schedule, what they call the meat chart. We have a lot of problems with it up north. Oftentimes you will have a person who is rated with a 10 per cent or a 15 per cent disability.

A person has been working in resource extraction. That is what we do in the north, logging and mining. That person has been making \$35,000 a year. They have a 10 per cent or 15 per cent pension. They get \$300 a month. They

cannot go back to work. There is no way that guy with the bad back can go back out there cutting trees again. What is he going to do? He has been working there for 20 or 25 years. What is he going to do now? Retire on his \$300 a month. That is justice.

I notice that the legislators included in there subsection 45(5). It sounds to me like you are saying, "OK. We recognize this. There is a problem in some cases. The supplement was created to try to help those people through those hard times."

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Mr.
(Mr. Mantis)

~~the supplement was created to try to help those people through those hard times~~

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What is happening? The Workers' Compensation Board has reinterpreted the law, which is that section, that act that you passed and said, "We are only going to give benefits under that section now if a person is involved in a rehabilitation program." The act does not say that. Where are they getting their interpretation? Why does the Minister of Labour (Mr. Sorbara) turn around and say, "It is up to them to interpret it. It is not up to us." You people passed the law. I mean it seems to me that it is up to you to make your intent known.

Included in this submission, I think just a minor change in that section, subsection 45(5), which would include that the supplements should be paid—I do not have it exactly right here.

Mr. Chairman: Page 8.

Mr. Mantis: Page 8. That "...where the impairment of earning capacity of the worker is significantly greater than is usual for the nature and degree of the injury, the board shall"—and right now it says "...the board may..."—supplement the amount awarded for permanent partial disability for such period as is necessary..." and then there is the rest of the act. I think you could send a very clear message to the board of what your intent is. I believe that is what the intent is. I believe you are not trying to ignore the problems of injured workers.

I guess I am a bit naive. I mean I figure we have this government of Ontario and these are the ones who are kind of running the show. What is going on? Let me ask you, how can the board interpret this section as it likes? Do you guys not make the rules?

I am getting upset here. I am sorry. Once again, we feel that rehabilitation is the main problem right now with the compensation board. I mean like you see here, in Thunder Bay we have done a survey of our workers. We did not have anyone standing up front they were trying to impress. Ninety per cent of the people want to go back to work.

What we need are two things. We need proper rehabilitation and we need encouragement from the government of Ontario. I mean everyone. Not only government but injured workers, certainly employers. Everyone has to take this to heart. There is a real waste of human beings, people who are out there living on welfare, social assistance, subsidized housing, Canada pension plan, all these expenses that the WCB should be responsible for, but it is not. They are being spread over the other social programs. We have a problem here that is bigger than the WCB. I think it is going to take all our efforts to try to change it, to show people that injured workers can be productive. We know we can. We are just waiting for the opportunity to show everybody else.

Once again, in terms of legislation here, we think that rehab should be enshrined in legislation. We suggest that, and the recommendation is on page 2 from the Ontario task force on voc rehab, it be incorporated perhaps a preamble or whatever in section 54, that a worker who sustains a serious

Mr. Mantis

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injury or a debilitating disease linked to the workplace shall have the statutory right to all rehabilitation required by that worker. Rehabilitation shall be defined as, "to assist workers who have suffered occupational injuries or debilitating diseases linking to the workplace—

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(Mr. Mantis)

~~... that any worker who sustains a serious injury or a debilitating disease~~
~~shall have the statutory right to all rehabilitation~~
required by that worker. Rehabilitation shall be defined as 'To assist workers who have suffered occupational injuries or debilitating diseases linked to the workplace in the process of restoration to the fullest physical, mental, social, vocational and economic independence to the maximum impossible extent.'

I think, once again, that would send a clear message to the Workers' Compensation Board that you are serious, that you do not want this waste to go on any more. These people can be back being productive members, paying taxes, being a part of their communities again, rather than, like a lot of people I know, feeling they are thrown out in the garbage heap.

It is kind of hard, representing injured workers, to not develop an attitude towards the Workers' Compensation Board. I have to keep on reminding myself that really we only see probably 10 per cent of the people who go through the system. For those people who are hurt and back to work right away again, the board does the job it was set up to do.

We also see some openings in the board. They are trying to communicate more and I think a real problem has been the adversarial role between injured workers and the WCB. I just got a taste of it today. I was standing out front, dressed up in my suit and everybody looked at me and I thought, "Jeez, they must think I'm from the board." I started getting paranoid. I thought, "Jeez, am I going to get out of here safe, or what?"

That creates a real problem. I think we need more openness on all sides to try to work out these problems, because that is how they are going to be worked out, if we stop and listen to each other. We are always saying that we want the board to listen to us, and we do, but I am willing to listen to it. I am very willing to enter into discussions without all kinds of recriminations.

We are the people who live with this problem 24 hours a day, 365 days a year. No one seems to be interested in what our view is. I think we could play a very positive role in trying to get justice for injured workers.

So maybe I will just close on that point and let our president say a few words. Thank you very much.

Mr. Caissie: Thanks, Steve. Last May 13, 14 and 15 we held a conference in Thunder Bay with injured workers' groups throughout the province. Through the recommendations that we came up with, we would like to pass them on to you here.

"(1) that the government adopt a policy of mandatory, affirmative action for the re-employment of injured workers."

I will jump down to number six. This was from the Fort Frances group. It was going to have a representative come but unfortunately, the fellow was not able to make it, so I came down in his place.

"(6) that the Fort Frances petition be endorsed. It reads:

"We, the undersigned voters and workers from Ontario, do hereby petition

Mr. Caissie

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the government of Ontario to ensure that the Office of the Worker Adviser in Thunder Bay remains open and fully funded by the Ministry of Labour to ensure that the problems with the Workers' Compensation Board are handled in an efficient and equitable manner."

Mrs. Marland: Excuse me, is there some question that it is being closed?

Mr. Caissie: No, there are three workers' advisers in Thunder Bay and that is for the whole district.

~~Mr. Marland: And the one position is being cut.~~

~~Mr. Caissie: One guy is going.~~

~~Mr. Marland: Good.~~

R-1730-1 follows

(~~Mr. Caissie~~)

~~... they are three workers' advisors in Thunder Bay and that is for the whole district~~

1730

Mr. Mantis: And the one position is being cut.

Mr. Caissie: One guy is going.

Mr. Mantis: Just cut.

Mr. Caissie: And from Thunder Bay to Fort Frances, I believe is about 300 miles, or something like that.

"(10) that section 54 of the Workers' Compensation Act be reworked to include the right to full rehabilitation for all injured workers including economic, social, medical, vocational and emotional."

To add to that, from our understanding--Steve had travelled in Europe last year, in Germany--if you do not take an injured worker back in the workforce over there, you pay a 40 per cent surtax, the companies do. So they have found that it is to their benefit to retrain the injured worker in Europe and in the Scandinavian countries, and also in New Zealand, Australia and a few other places.

Interjection: Yes, but this is Ontario.

Mr. Caissie: Maybe we can learn by what they are trying there. It seems to be working.

"(13) that we push the Workers Compensation Board to provide more 'seats' at community colleges for the upgrading of injured workers and enlist the support of the colleges to this end."

I would like to say a few things about that, because presently, I am at Confederation College in Thunder Bay myself, taking an upgrading course. In the college I believe there are around maybe, ??out of 200,000 people, let's say, for the whole northern area, there are about 10 people in the college. Those are all the people on rehabilitation program right now.

Out of those 10 people, there are about 7 or 8 of them who are from out of town. They get \$70 a week for room and board, as they leave their families in Terrace Bay, ??Schreiber, Fort Frances and Dryden. They have to go to Thunder Bay and live on \$70 a week. That is room and board while they are going to school.

As if it is not hard enough that you have to put your mind to what you are learning, you have to starve while you are doing it. This is effective rehabilitation in the north.

"(15) that we endorse the concept of universal disability insurance and encourage the standing committee on resources development to study the issue with an understanding that research into specifics is required."

"(17) that we lobby the WCB for realistic attendance allowance for the 100 per cent permanently disabled injured workers to reflect actual costs."

In Thunder Bay we had a woman on, right after the conference. Her husband is 100 per cent disabled. She was looking after him. The guy did not want to go to a hospital and be taken care of like an invalid in hospital. He is paralysed from the neck down. One of the jobs that she had to do, she had to quit her job, first of all and look after her husband. She needed a pair of gloves. I guess, when the guy goes to the washroom, it creates such a mess that she needs these special rubber gloves to look after it, to clean up the mess.

The board told her that: "We give you five pairs a week. What are you doing with them?" It is a big thing. So she wrote a letter, 19 pages or so, to Mr. Elgie. In response, four workers were sent from the WCB to Thunder Bay, rented two rental cars and drove to the house to check over the situation.

Interjection: ??shame.

Mr. Caissie: The woman just could not believe it—all over a pair of rubber gloves.

Interjection: ??need the Mafia.

Mr. Caissie:


"(19) that we lobby to expand the Office of the Workers' Adviser and clinics to meet the needs of the injured worker.

"(20) that it be a primary goal to establish a resource centre for injured workers in northwestern Ontario based in Thunder Bay."

I would like to add a little bit to this. We, the injured workers in Thunder Bay, and the Thunder Bay district, think that, given the chance, we might do the job pretty well just by ourselves. We can put some of our own people back to work, if we had a centre.

There are ways that we can create work, small work and different things, if we had a chance. We are not getting that chance from the WCB so we are asking the committee to have a look at that.

R-1735-1 follows



(Mr. Caissie)

~~... talk pretty good just by ourselves. We can put some of our own people back to work if we had a centre. There are ways that we can create small work and different things if we had a chance. We are not getting that chance from the Workers' Compensation Board, so we are asking the committee to have a look at that.~~

I guess I will not take up any more time because I think there is another group coming in behind me and everyone else seems to have said it all; so on that note I will say, thank you.

Mr. Chairman: Okay, George and Steve, thank you very much for coming down from the north and making your presentation to us. I know some of the work that you people do in Thunder Bay, and you are certainly to be commended for it. Thank you very much.

The next group is the Southern Ontario Injured Workers, along with the Southwestern Ontario Injured Workers Group, so if they would come up here, we could hear from them.

Just while these people are getting settled if, as I indicated earlier, the amendments that do come before the committee we will try very, very hard to make sure that the injured workers' groups get a lot more time before the committee and that there will not be restrictions on the time at all. That is important.

Mr. Slinger, are you going to kick things off for us, so to speak?

Mr. Slinger: Mr. Chairman, first of all, Mr. Comi is with the Welland Injured Workers Group and we have agreed to share our time with him. In fact, I am familiar with that group and it is a very active and strong group. We are going to let Mr. Comi go first. Just to allay your fears, only two of the four of us will be speaking so we will endeavour to do it very quickly.

WELLAND DISTRICT INJURED WORKERS ORGANIZATION

Mr. Comi: The submission I have made is not very large. Our organization was organized by injured workers in the Niagara Peninsula who were experiencing problems with the Workers' Compensation Board. In the eyes of the injured workers, the WCB system had developed into a massive self-serving, employer-based bureaucracy that is arrogant, unresponsive and literally continuously pushing injured workers into prolonged periods of depression, financial ruin, demeaning lifestyle and family breakup due to extreme stress. Furthermore, an all-too-frequent injustice is the gradual transfer of these persons and families from the corporate-funded WCB system onto the welfare rolls of the community.

Although the Welland District Injured Workers Organization was organized primarily to lobby for reform of the WCB system, we have become increasingly aware of the individual problems of not only injured workers but of all vulnerable adults who are experiencing even greater and more complex problems falling through the cracks of an unresponsive system.

It is time for Canada, as a whole, and Ontario, specifically, to become

civilized and raise itself to the level of the Scandinavian countries, northwest European countries, Japan, Australia and New Zealand, by providing universal accident insurance coverage for all our citizens. A good place to start would be to revamp the Workers' Compensation system and expand from there. To this end, we submit the following proposals:

1. Mandatory rehiring of workers on either a full-time or part-time basis according to their capabilities.
2. Rehabilitation services should immediately intervene with a program designed specifically to suit the needs of the individual injured workers.
3. Full compensation is to continue as long as a disability lasts and/or rehabilitation successfully places the injured worker in a suitable job. "Suitable job" definition requires that the injured worker be maintained at the same income level in a job which he is capable of performing.

~~4. Time limits must be placed on all correspondence and all decisions. In those cases which exceed a time limit of one month, the board must assume responsibility of the injured workers and...~~

R-1740-1 follows.

(Mr. Comi)

~~... maintained at the same income level in a job which he is capable of performing~~

1740

4. Time limits must be placed on all correspondence and all decisions. In those cases which exceed a time limit of one month, the board must assume responsibility of the injured worker and his or her family's living expenses until a decision is reached.

5. The meat chart must be abolished.

6. All medical decisions are to be based on reports by the injured worker's own doctors who are familiar with the case.

7. Board doctor accountability: Board doctors must be held accountable for their medical opinions and decisions. Furthermore, they must be available to defend said action at Workers' Compensation Board and Workers' Compensation Appeals Tribunal hearings.

8. Drop the Weiler report recommendations, which are unfair policies and detrimental to the wellbeing of injured workers.

9. Implement the Minna-Majesky findings and philosophy that an injury to one is an injury to all.

10. No arbitrary interpretation of section 86n of the act by the board of directors. Decisions of WCAT, an independent body, must be final.

11. The board's most recent reinterpretation of subsection 45(5) and new policy on supplements must cease. There should be no time limits on benefits paid. Injured workers must remain at the same income level indefinitely until equivalent employment is found.

12. High schools should carry at least one compulsory credit course on accident prevention, their rights and responsibilities in the workplace, outlining how to handle a situation in case of accident or injury and what recourse is available to them. This must be a required entry-level high school course for all students in all programs.

13. In those cases where travel is an undue hardship for the injured worker, the board assessment will be carried out at the nearest suitable board, rehab or medical facility to the injured worker's place of residence.

14. The Ministry of Labour must review the case load of the officers of the workers' advisers annually, to identify and geographically define those areas which require additional offices in order to comply with the necessary time limitations for expedient administration of the act.

All we ask is justice for injured workers. Thank you.

THE SOUTHWEST REGION CLINICS' ASSOCIATION

Mr. Slinger: Let me just introduce the group from the southwest.

Mr. Slinger

R-1740-2

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First of all, we are here as representatives of southwest clinics in the province. There are 15 clinics in the southwest of this province. All the people here have represented injured workers extensively over the last several years. On my far left is Peter Peterson of the Sarnia clinic, to his right is Debbie Kahler of the St. Catharines clinic, to my immediate left is David Craig of the Halton Hills clinic and I am John Slinger from the McQueston clinic in Hamilton.

David will speak first, but let me just indicate that we certainly support everything that was said here. We know the time is short, but we are certainly satisfied that all of this has to be said. There is certainly no concern on our part about the difficulty of getting in at the end because, as I say, the things that have been said have to be said.

We are, however, going to concentrate our remarks on section 86n because it is a section that we feel has enormous implications and is probably the major problem facing workers right now, in our opinion. I think the permanent disability, reinstatement and rehab issues are going to be focused on in future hearings, with draft legislation coming out this month. Again, we will be confining our remarks to 86n, and I will turn it over to David Craig.

Mr. Craig: Thanks, John. I have handed out, and you have in your possession, a brief submission on section 86n, which is essentially a legal brief. Can I assume that members of the committee are familiar with 86n?

Mr. Chairman: Yes. I think it has been raised a number of times.

Mr. Craig: I thought it might have been.

Our submissions constitute four points and they are listed in the introduction. First of all, we are submitting that the standing committee and the Legislature have to address the meaning of section 86n and have to make some attempt to or have to clarify its meaning.

R-1745-1 follows.

~~(Mr. Chairman)~~

~~... I think it has been raised a number of times.~~

~~Mr. Craig: I thought it might have been. Our submission substitutes~~
~~for policy and they are listed in the introduction.~~

~~First of all, we are submitting that the standing committee and the~~
~~Legislature have to address the meaning of section 86n and then do have~~
~~clarity the meaning.~~

In doing that, it is our further submission that it is relevant to consider what the meaning of section 86n presently is, even though that is unclear, to attempt to come to a correct interpretation of section 86n as it is presently drafted.

Third, our submission is that the correct interpretation is that even as presently drafted, section 86n leaves the final say with the workers compensation appeals tribunal.

Fourth, if it were otherwise, if the final say were left with the board, that would constitute a serious erosion of the sovereignty of the Legislature and of the power of the Legislature to enact workers' compensation legislation.

The reason this committee and the Legislature have to address section 86n is that—I think it is beyond argument and accept that it is an extremely poorly drafted section. Nobody knows what it means. It is ambiguous and leaves unsettled where the final say is in all of this. That is unacceptable for two reasons first of all because it is fundamental to the act and to the whole scheme of workers' compensation. How can you have something which is pivotal, central to the whole system, and you do not know what it means?

Second, it affects thousands of injured workers, thousands of employers, it affects the board and the tribunal; everybody who is involved is very much affected by not knowing what the outcome is going to be. Leaving it to the courts is not acceptable, I suggest to you, because it has already been three years. It will be several more before a final resolution comes by way of the courts, and that will not necessarily express your intention as members of the Legislature.

I am suggesting that you as a committee have a responsibility, unappetizing though it may be, to take on section 86n. I suggest a redrafting of that section so that we all know what it means. Our submission is that even as drafted, the correct legal interpretation is as follows:

Section 86n recognizes and accepts that the board possesses some expertise in understanding the social, legal and historical context of workers' compensation law. It has been there since the beginning and it has some understanding of the history of the act. That is relevant to an interpretation of the act, but that the final interpretation of the act itself, that is, reading and interpreting the act in the words of the act, remains, even under section 86n as it is now drafted, with the tribunal.

Our reasons for that are set out in the paper. We have analyzed the meaning of the words "policy" and "general law" because our argument centres on that. It is our submission that reading the cases, the word "policy" means

the following: It means that legislation is enacted in a certain social context. There are certain social conditions which give rise to legislation and there is a scheme which is proposed to solve those conditions. Therefore, there is that policy, that is, the social objectives and the plan devised to remedy the problem. That is the policy which lies behind the act. That comes from a reading of various cases.

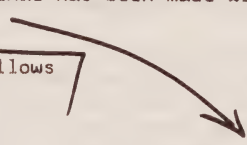
The phrase "general law" in our submission means just what it sounds like. It refers to the broad legal context and it refers in part to the state of the law at the time the legislation was enacted. It means, as has been quoted in one case, simply the ordinary law of the land.

If you come to look at general law and policy under the act, one of the policies under the Workers' Compensation Act is to recognize there are social evils in having workers have to make civil claims under the law of negligence for accidents at work, and the policy is to remove compensation for workers from the civil system and create a no-fault insurance scheme instead. That is an example of policy.

An example of general law under the act would be the common law of negligence as it existed at the time the legislation was first enacted. The three common law defences available to employers in the history of employer liability acts that existed at the time the first workers' compensation legislation was brought in.

Given that, looking then at the role of the board and the role of the tribunal, as I have said, it is our submission that the scheme under section 86n is to recognize that the board possesses a certain expertise. It has administered the act since its inception. It is at least arguably familiar with the general social and legal context which existed at the time the legislation was brought in. Therefore, when it considers that a decision of the tribunal has been made without a full understanding of that social and legal—

R1750 follows



(Mr. Craig)

~~... when it considers that a decision of the tribunal has been made without a full understanding of that social and legal context, it has the power to make the tribunal aware of the board's understanding in view of that social and legal context and to ask the tribunal to reconsider in that light.~~

1750

Looking at the role of the tribunal, while it is certainly important that the policy and general law, that is, the social and legal context, are relevant in interpreting the act, it is a fundamental principle of legal statutory interpretation that ultimately it is the words of the act which must prevail and the proper reading of the words and the sections of the act in the plain and ordinary sense in which they are written.

We have pointed out that there is a principle of interpretation called the presumption against tautology. Now that is applied here is that it is assumed that every word in an act has a meaning. It is therefore assumed that when the legislation uses the phrase "general law," that the word "general" has some meaning, and if you ask yourself, what is something different from general law, the answer is specific law, specific law, in this case, being the Workers' Compensation Act. So the board has the power to look at the general law, which is the law surrounding the act, the law of the land. The contrary to that is that the tribunal has the ultimate authority to look at the specific act, which is to interpret the act itself.

That is the position that the tribunal has always taken. I have quoted the tribunal from its first annual report, but the tribunal has consistently taken the position that it does not look at policy of the board. It has nothing to guide it except the act itself, and that is its function; its function is to interpret the wording only of the Workers' Compensation Act.

We have pointed out also what we have come to call the chicken-and-egg argument. There is an interesting conundrum: If you do not give the ultimate authority to the tribunal, because under section 86n the board's power to review comes into play only if there is a finding that a decision of the tribunal turns on an interpretation of the policy and general law of the act, the question then becomes, who decides whether it does in fact turn on an interpretation of the policy and general law of the act.

It cannot be the board that determines that because that is not in itself a question of policy or general law. So it has to be the tribunal that determines whether its section 86n can be invoked in the first place.

It is not a logical legislative scheme to have jurisdiction to decide the issue originally with the tribunal but then to believe that if they decides that it is a matter of policy and general law, they give up that jurisdiction. It is a far more sensible interpretation to say that if on the threshold question, jurisdiction lies with the tribunal, then they do not give up that jurisdiction once they have determined that section 86n applies.

Finally, we have suggested that the question is important in order for the Legislature to maintain the sovereignty of the Legislature. If the final say lies with the board under section 86n, in our view that would usurp the proper role of the Legislature and would erode the sovereignty of the

Mr. Craig

R-1750-2

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Legislature because any enactment, either the existing act or any amendments to the act which the Legislature would make, could be defeated by the board under the guise under section 86n of reviewing the amendments and interpreting them according to their understanding of policy and general law.

The speaker from the north who addressed you a few minutes ago made that point very well when he spoke about the reinterpretation of subsection 45(5). We have had one interpretation of subsection 45(5) for 20 or 30 years. The wording has not changed, but suddenly the board has discovered that the previous interpretation was all wrong and a different interpretation is right. The previous speaker asked, how can they get away with that? How can they interpret the act any way they like? And that is exactly the point. It is our submission that they will be able to do that if the final say lies with the board under section 86n.

The way to solve that is, assuming that section 86n has to exist at all, and I am not sure it does, but if there is a role for a review under section 86n, the way to solve it is to make sure and to clarify that section so that—

R1755 follows



~~Mr. Craig~~ Mr. Craig

~~not been able to do that if the final say lies with the board under section 86n. The way to solve that, assuming that 86n has to exist at all, would be not sure it does, but if there is a role for a review under 86n, the way to solve it is to make sure and to qualify that section so that it is clear that the ultimate interpretation of the act itself remains with the tribunal, so that when you as a legislature make amendments to the act, the ultimate interpretation of your intent lies with the tribunal.~~

Mr. Slinger: I have a few comments, mostly regarding the lack of reform agenda for the 86n issue. I can honestly say that when I was preparing my remarks a week ago, I had intended to address entirely the question of permanent disabilities and specifically the government's record of inaction on that issue.

The ground was taken out from under me a little bit when I read in the Toronto Star last Friday that Mr. Sorbara announced on the steps of Queen's Park that a draft bill would be coming in at the end of June. I later found out that he had announced that to this committee on May 25—not draft legislation in relation to 86n, but draft legislation in relation to the permanent disability issue, I am sorry.

I think it is still worth reflecting a little bit on the history of action around the permanent disability issue. I then want to focus some comments on the implications that has for the lack of a current agenda for reforming 86n.

My paper that you have in front of you is entitled: "Does this government really care about injured workers?" The record speaks for itself. It details the history of reform to the permanent disability issue. We begin in 1980. Of course, the process probably began long before that.

There is a quotation from Mr. Weiler who indicates at that time that the scheme had totally lost any legitimacy. What followed was a process that went through a white paper and hearings from this committee which resulted in a recommendation from this committee.

It was interesting for me to note, in reviewing the history, the Liberal dissenting report on this issue, back in 1983, with Jack Riddell, John Sweeney, and Bill Wrye, indicated that a new system for compensating permanently disabled workers was needed not later than January 1, 1986.

Then a bill was introduced which, of course, did not contain any changes to the permanent disability system, any reform to the meat-chart process.

On page 3 I have quoted Russell Ramsay when he introduced this for second reading. He indicated that that issue was still under active consideration.

Mr. Wrye rose in the House to dispute the nature of the reforms and questioned whether or not they represented any reforms at all. I am quoting him when he said: "The point is that after four years on what Weiler called the central ingredient of workers' compensation benefits, this minister and this government have the audacity to come to this House and to the injured workers of this province and say, 'We do not have a clue as to how to solve

your problems so we are going to have an active consideration."

He went on to indicate that in his opinion sufficient study had already taken place and that reforms were necessary immediately.

As we all know, Mr. Wrye, a year later, was Minister of Labour. Mr. Wrye addressed this committee on October 1, 1985, and again criticized the Conservative government for what he described as a vague and indefinite future review. He said he regarded reform in this area as a matter of some urgency and went on to conclude that he would be in a position to bring forward such legislative reforms at an early date.

I think injured workers, and certainly we as representatives, had our spirits somewhat buoyed by that, but it began to unravel in January 1986 when we requested a meeting with Mr. Wrye. At that time, the Villanucci case had commenced and the tribunal was reviewing the whole question of permanent disabilities. The board was engaged in an internal review of the meat-chart.

We met with Mr. Wrye and suggested it was time to take some leadership on this issue and reminded him of his earlier comments. He said to us that this was "a front-burner issue." I use that in quotation marks—"a front-burner issue"—

R-1800 follows



(Mr. Slinger)

~~disabilities. The board was engaged in an internal review of the meat chart~~

1800

~~We met with Mr. Wrye and suggested it was time for him to take 1800~~
~~leadership on this issue and reminded him of his earlier comments. He said to~~
~~us that this was "a front burner issue" — I use that in quotation marks, "a~~
~~front burner issue" — although no specific timetable had been established for~~
the reform process.

Mr. Wildman: It's boiled over.

Mr. Slinger: It has boiled over. That is right.

We then had another Weiler report. We had another standing committee hearing on March 10, 1987 when the minister was asked, I believe by Mr. McClellan, what the Weiler report would play in the reform process, and, to borrow a phrase, his response was vague and indefinite.

That led us then, of course, to the Villanucci decision which said that the meat-chart was just fine, even though there was absolutely no factual basis to link its benchmark percentages to impairment of earning capacity. In other words, it did not mean anything, but it was legal. One would have thought that would have cried out for a more urgent need for reform.

Mr. Wrye was then replaced. The subsequent throne speech stated, and in fact the most recent throne speech again restated, the commitment of this government to reforming permanent disabilities. Nothing more happened and then, as I indicated, I read in the Toronto Star last Friday and later found out that Mr. Sorbara had announced to this committee that reforms of the permanent disability system and other reforms would take place later this month or perhaps somewhat later than that.

I wish to conclude on that by simply saying it has been eight years since the initial Weiler report, four years since Bill Wrye's criticisms of the Conservative government for failing to bring in pension reforms under Bill 101, and two-and-a-half years since Mr. Wrye told this committee that he would be bringing in reform legislation shortly.

We finally now have something on the table. I certainly will not get into the issue now. That is for a later debate. I can simply say that I think the injured workers of this province deserve a far greater commitment to justice than they have been getting.

In light of what is clearly a litany of inaction, we are deeply concerned about the government's willingness to act decisively on the question of 86n. We think that is a very serious problem. The urgency is clear. Chronic pain cases will soon be flooding to the tribunal, and, after that, they will be flooding back to the board on 86n reviews.

I would like to point out to this committee that 86n was discussed last year. There were grave concerns expressed both by the presenters and by the members of this committee about the implications of 86n.

Mr. Slinger

R-1800-2

55

June 6, 1988

When Mr. Sorbara addressed this committee on May 25, he indicated that while he had serious concerns about it, he did not know what his position was. He also said there was no specific timetable for the reform process to go on with respect to 86n—again, vague and indefinite.

In light of what we have seen for the purposes of permanent disabilities, we have tremendous concern with the lack of a reform timetable for the 86n issue.

We urge this committee to request the immediate repeal of section 86n, and we ask this government: At what point does it become embarrassed by its record?

Mr. Chairman: Thank you, very much. I particularly appreciated the way in which you made legal arguments that made sense to me and I am sure to other members of the committee because that is not always easy to do. I do appreciate that very much on 86n.

I recall the debate last June in the committee on 86n. It still is nagging us. I do not know. We will see what comes of the committee's deliberations.

I should take this opportunity, on behalf of the committee, to thank you all. I know it was not easy for all of you to get down here on one afternoon. I assure you, you do give strength to your cause and to the people who are presenting your case before the committee by showing up in such large numbers. On behalf of the committee, I want to express my appreciation for the efforts you have made to come down here to show your concern.

We know better than to make big promises to injured workers that their problems will be resolved because they have made an appearance before a standing committee. All I can say is that we will, I hope, be writing a short report and then dealing with the amendments to the legislation which, as I have said earlier, we have not yet seen.

When that day comes, then we very much want the injured workers groups to have a major say before the committee.

R-1805 follows

(Mr. Chairman)

~~... and then dealing with the amendments to the legislation which as I said earlier, we have not yet seen, but when that day comes, we very much want the injured workers' groups to have a major say before the committee.~~

Is there anything else that any members of the committee wanted to say before we adjourn?

Mr. Wildman: I would just like to ask one short supplementary on the argument regarding section 86n. Basically what you are saying is if section 86n remains or some form of review remains in the act, the board could conceivably be able to request a review and give reasons but that the review would be carried out and the final decision would be made by the Workers' Compensation Appeals Tribunal?

Mr. Craig: Yes. That is what we are saying the legislation says now because the tribunal—

Mr. Wildman: You are just saying it should be made clear that is what it does?

Mr. Craig: Yes. There is no certainty that if that went into a court and had to be interpreted that would be the result. We think that is the best legal argument in the reading of it, but it is by no means clear and should be made clear.

Mr. Wildman: Also, I want to say that during the discussion in the committee, I specifically asked Mr. Sorbara if he believed that WCAT could make independent decisions as long as section 86n exists, and he said yes.

Mr. Leone: Mr. Chairman, you know I have been speaking in this committee every time we have been talking about workers' compensation, and I have been saying that workers' compensation is the number one problem in the Italian community.

Today, I had a sad experience that has moved me because I heard our workers—not all Italians; everybody here—speaking of something which is their right and not begging here. It moved me, the lady who cried, and I had my own experience two weeks ago with a similar lady with her arm paralyzed, one arm. When I asked her what happened, she said she was under pension, 10 per cent pension, and she started to cry.

Now I am a member of the government, and I think we have to pledge to these people that we will work toward justice until justice is done to you.

Mr. Chairman, I would like say a few words in Italian.

[Remarks in Italian]

Mr. Chairman: The committee will now adjourn until Wednesday afternoon at about 3:30, in room 151, in the main parliament buildings. I should just reiterate that those committee meetings are always and while the rooms are not big enough to hold this many people, injured workers are always welcome to drop in.

The committee adjourned at 6:08pm.

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R-28

(Printed as R-13)

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

ANNUAL REPORT, WORKERS' COMPENSATION BOARD, 1986

WEDNESDAY, JUNE 8, 1988

Draft Transcript

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

CHAIRMAN: Laughren, Floyd (Nickel Belt NDP)

VICE-CHAIRMAN: Wildman, Bud (Algoma NDP)

Brown, Michael A. (Algoma-Manitoulin L)

Collins, Shirley (Wentworth East L)

Grier, Ruth A. (Etobicoke-Lakeshore NDP)

Leone, Laureano (Downsview L)

Marland, Margaret (Mississauga South PC)

McGuigan, James F. (Essex-Kent L)

Miclash, Frank (Kenora L)

Miller, Gordon I. (Norfolk L)

Wiseman, Douglas J. (Lanark-Renfrew PC)

Clerk: Decker, Todd

Staff:

Madisso, Merike, Research Officer, Legislative Research Service .

Witnesses:

From the Ontario Chiropractic Association:

Chapman-Smith, David, Consultant

Koch, Dr. Roberta, Vice-President

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Wednesday, June 8, 1988

The committee met at 3:35 p.m. in room 151.

ANNUAL REPORT WORKERS' COMPENSATION, 1986
(continued)

Mr. Chairman: The resources committee has been charged with the task of examining the latest annual report of the Workers' Compensation Board. Today we have appearing before us the chiropractors, the Ontario Chiropractic Association. So I would ask the chiropractor spokespersons, Dr. Roberta Koch and Dr. David Chapman-Smith, to come to the front and we can get into their presentation and exchange with them.

While they are doing that, just for information for the members of the committee, the report on mining accidents is virtually completed and tomorrow we hope to have a copy distributed by the clerk to everybody's office. If we wait until the committee, some members are not here for the committee and so forth. We will get the copy of the report distributed to all members of the committee. As most of us know there is a time problem with getting it done and we really want to get it tabled this session. I think everybody was in agreement with that. I do not think anything has been changed that is at all fundamental but every member should have a chance to go through it and read it.

Is it acceptable to the members, if they get it tomorrow morning, on Monday you would have had a chance to look at it? I do not think there are any tricks in it. There is nothing in it that is new. If that is acceptable, then we could start the process of getting it printed up properly and so forth. If there is a delay of a day or something, it is not the end of the world but we are getting towards the end of the session and it would be nice to have the time to do that. Any problems with that?

Ms. Collins: On the Monday then we would actually go through it, item by item again?

Mr. Chairman: No, what I was hoping, subject to the wishes of the committee because we have a full schedule and on Monday we have the Council of Ontario Contractors Association and Canadian Union of Postal Employees, a CUPE local coming before the committee. It would be nice if we could have the committee members look at the report, see if there are any problems in it. If there are no problems in it then we just proceed with the printing. If there are some real concerns in there, let us know and we will put it on hold and not proceed immediately.

Ms. Collins: OK, so if there are problems we have an opportunity to address them.

Mr. Chairman: Absolutely, that would be silly to do otherwise. If there are problems we would set aside, for example, either Wednesday, which is when we have the board here before the committee or Thursday where we were going to try and use Thursday for an organizational day, to try and plan the

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schedule and see what we were going to do. But for sure, if there are problems in it that take more than two minutes then we will schedule a time to go through those. At this point it is a unanimous report, so I think we really want to think carefully before we do something to alter that fact. OK, then. So, tomorrow you will get a copy of it and Monday—I know it is a bit of a push, it takes about an hour to read it—and then get it distributed and on Monday if there is any problems—

Mr. Wiseman: Is this in rough form Mr. Chairman or is it complete?

Mr. Chairman: It is in form like this, nothing is printed up and there may still be corrections. I saw it for the first time this morning and just went through it quickly and made a couple of suggestions on layout and headings, that kind of thing, but not on terms of specific recommendations. I did not see anything in there that jarred or anything like that but every member should make that determination themselves. OK, so that is what you will get tomorrow and then Monday it would really be helpful if members had a chance to go through it or assign someone from your caucus...

R-1540 to follow



(Mr. Chairman)

~~... take up his termination themselves. OK? So you will get tomorrow and the Monday it would really be helpful if members had a chance to go through it or assign someone in the service to go through it or whatever and have a look at it. OK? Good. Thank you.~~

1540

Let us proceed with the Ontario chiropractors. If you would introduce yourselves and proceed.

Mr Chapman-Smith: We are first of all on my left, Dr. Roberta Koch is the vice president of the Ontario Chiropractic Association and practises in Hamilton and talking to her just before the hearing commenced I can confirm that she has a large number of WCB cases herself in her practice.

I was introduced, as I often am, as Dr. Chapman-Smith but I am not. I am Mr. Chapman-Smith and I am a lawyer and I act for the association and a number of chiropractic organizations inside and outside Canada. I have a number of affiliations with health care including sitting on the Interprofessional Relations Committee of the American Back Society, but I certainly do not pretend to have any formal qualifications in health care.

Mr. Chairman: Is there anybody in the audience that you would like to introduce or would you rather not be known to be associated with them?

Mr Chapman-Smith: It is very hard to see but perhaps Dr. Lloyd Taylor ???from Welland Bocher, who is the Queen's Park representative, as many of you will know, of the Ontario Chiropractic Association and sits on its board.

How much time do we have?

Mr. Chairman: Well, we have no other group scheduled this afternoon and we must adjourn by 6. So you can take an hour without any problem.

Mr Chapman-Smith: About an hour. Right.

You have before you a submission and I hasten to add that there is only 2 1/2 pages of text there and the rest of it forms exhibits. Just before I get into that material, which you will see has got a mildly provocative title to try and get us all thinking at this stage of a busy afternoon, I just want to make one or two opening remarks.

In this year's annual report, as in all previous ones in recent times in Ontario and in every other jurisdiction in the western world, we see that back injuries are by far the largest area of claims—about 30 per cent, more than twice any other area. They represent much more than that in terms of cost for the Ontario Workers' Compensation Board. Estimates in the literature, again throughout the western world, vary between 50 and 75 per cent of total claims cost coming from those 30 per cent of claims. That is because of the big ticket item, as you will all well know, is the chronic low-back pain case.

What would you or I do if we were on the board of a private enterprise called the Ontario WCB and we had to satisfy the needs of the people we served

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which are the injured workers and the employers who are putting in some funding? What is the very first thing you and I would do? We would look at back pain seriously.

One of my sidelines is that I run a publishing business and my big costs there are printing and postage and then there is staff and then there is premises. When I am worried about my costs I look at those, not paperclips. It is outrageous that the Ontario WCB has never looked at seriously at the cost of back pain which is the foundation of its existence, its costs and its problems.

Now before this committee there will be many people appearing on many different issues and we do not propose for a moment to deal with everything. But we are going to focus this afternoon on back pain because it is such a big area and come down to, what I trust you will find, are a couple of eminently reasonable suggestions for action that should have been taken a very long time ago.

Turning to the submission in front of you, I will read, but fairly quickly through the introduction which frames the following remarks:

1. The category of claims that generated the greatest suffering and cost is low-back.

2. Most of these claims arise from the strain/sprain type injuries.

~~3. The great majority of cost arises from the low-back and strain/sprain type injuries.~~



Chapman-Smith)

~~these are the figures. They most of these claims are raised.~~

~~2. Most of these claims arise from strain sprain type injuries.~~

3. The great majority of cost arises from the under 10 per cent of chronic cases. This could be two-feet high, if I indexed all the literature behind this, but any comment we make this afternoon on which you want evidence, we can provide more of it.

4. I take a few comments from Gordon Waddell, whom I first knew as an international rugby star as I grew up in New Zealand, he is from the British Isles, now prominent orthopaedic surgeon in Scotland, and he won the Volvo international award in clinical sciences, the foremost international award in the area of back pain, for an article last year in which he made these comments: "Modern medicine can successfully treat many serious spinal diseases and persisting nerve compression, but has completely failed to cure the vast majority of patients with simple low-back pain. We must change our whole approach to low-back disorders, the main theme of management must change from rest to rehabilitation and restoration of function." Get the patients moving early. Treat them actively, encourage them to get going.

I have now got some figures which are from the UK. I am sorry they are not from Ontario; such figures, I do not think, are available. These are from Waddell's article. There are comparative facts to be found in other jurisdictions but look at these figures. Episodes of incapacity from back pain per 1,000 persons per year; in 1955 in the UK, 21.7 for men and eight for women. In 1981, 58.2 for men and 44.7 for women. Over the same period days of sick certification for back pain rose 350 per cent for men and 500 per cent for women. What he is saying in his article is that we have created back disability. His article, interestingly, was written after he came back from a year on furlow in Oman. There he found back pain but no back disability, because people kept working, kept moving. He said that we have created it, and it has got to be changed.

5. The new model of management calls for early active intervention, and I have underlined a proposition you may think surprising. There has been a vast amount of research published in the last 10 years and now the single treatment modality with the most scientific evidence of effectiveness is spinal manipulation.

The Ontario WCB has never used chiropractic services within its own treatment centres or ever analysed the comparative cost effectiveness, despite (a) excellent Canadian evidence of the dramatic effectiveness of chiropractic in the treatment of low-back pain; and I will come to (a) a little bit more fully shortly; (b) a number of US WCB studies showing shorter disability and 40 to 50 per cent saving in treatment costs under chiropractic care; (c) evidence from Ontario employers of benefit to workers.

Maybe we will turn to exhibit A, which is just a recent, short, simple statement from an employer in Ontario. I see it is dated August 1987, sent by Cadet Cleaners. There has been a refusal of an MD to refer to a chiropractor and they say in the last paragraph, "This is upsetting because we have found how effective it is for all these problems." Returning, then, to the text, I have been in Canada six years and I can say from my own experience acting for the OCA that (d) is entirely correct, persistent pressure from the OCA for (i) analysis by the WCB of the comparative cost effectiveness of chiropractic and

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medical management of similar populations; (ii) a trial and study of chiropractic services within WCB treatment centres.

Under B, I would like now to talk to the three documents listed under paragraph 1. The first is an OCA submission that was made to the WCB board in March 1987, and I now turn to that.

1550-1 follows



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... This has some text and attached to the text, commencing with page B-8, there is a copy of the research article being referred to, which is an article from the Canadian Family Physician by Professor Kirkaldy-Willis and David Cassidy. About him, I will have a little more to say in a moment.

1550

However, in the text—and I am now talking about page B-3—I have endeavoured to summarize what is in that paper so that within the confines of this afternoon we can get through it. I stress that the paper is there for anyone who wants to see that I am treating it fairly.

1. There is an attached paper, exhibit A.

2. This ground-breaking research was first published in 1983. It was republished in 1985 because of its extreme significance and the treatment of chronic low back pain. The Canadian Family Physician article, over and above reporting the trial, specifically addresses various other questions about spinal manipulation.

Essential features of this research which I think will be of interest to you:

3. The study was conducted at the University Hospital at Saskatoon over a period of six years. It is still continuing and I can confirm that is the case today.

4. The principal researcher is Dr. Kirkaldy-Willis, an orthopaedic surgeon, and Dr. Cassidy, a chiropractor, both internationally acknowledged leaders in their professions. This is Kirkaldy-Willis's latest book which would hold a candle to anything published in the world in this area. He is the past president of the ??International Society for the Study of the Lumbar Spine, which is the most learned medical society in low back pain worldwide and he is currently president of the ??American Back Society. So we are talking about a distinguished man, now in his early 1970s, who is at the peak of his profession.

5. The aim of the study is through the co-operation of both professions to determine the effectiveness of chiropractic care for a population of chronic low back pain patients admitted for hospital care. The chiropractic care consists of assessment of joint dysfunction and, where appropriate, spinal manipulation.

6. All patients entering the trial were totally disabled by constant severe pain and had suffered for many years.

7. The results appear in the research article.

8. If you take the 171 patients examined and diagnosed as having joint dysfunctions at the posterior joint and/or sacroiliac joint—they are totally disabled for an average of 7.6 years. Following a two- to three-week regime of daily chiropractic manipulations, 87 per cent returned to full function with no restrictions for work or other activities. Not a single patient was made worse, and what is always important in these studies, the next point:

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The success rate given was maintained at 12-month followups. How often have you heard that it might work for a few days but then falls off?

9. There was less success with some other categories; 36 per cent success rate with patients with central spinal stenosis; that is bone degeneration, narrowing the canal so there is pressure on the nerves. I have indicated that could be interpreted as an even more remarkable result because that is a condition that would not normally be sent for spinal manipulation at all. However, we will not get into the details of that now. That is all there in the paper.

The relevance to the Workers' Compensation Board:

All of this does come home to roost, I assure you. This research is of high significance here because (a) I will not go through that; we have just said that.

(b) The research is Canadian; (c) high calibre researchers; (d) it relates to population of hospital admission patients totally disabled by chronic low back pain; (e) remarkable results; maintenance of improvement, no patient made worse; and it is so conservative and inexpensive.

11. Dr. Kirkaldy-Willis, faced with these results, has altered his practice for chronic low-back-pain patients. As explained in lectures—I most recently heard him say this in Orlando at the ??American Back Society three weeks ago to 600 orthopaedic surgeons, chiropractors, etc. from round North America.:

(a) All back pain patients other—

R1555 follows



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and so explained in lectures, and I most recently heard him say this in Orlando at the Panamerican Back Society three weeks ago to 500 orthopedic surgeons, chiropractors, osteopaths and physical therapists. "Most all back pain patients other than those with clear disc prolapse with marked nerve root involvement are sent for chiropractic assessment and, if indicated, spinal manipulation."

(b) This is regardless of whether or not X-ray or other investigations show conditions like stenosis, thought not to be amenable to chiropractic.

(c) It is justified because experience has shown that frequently these conditions have got nothing to do with the symptoms.

(d) If there is no response under chiropractic care, they were still valuable. Only three weeks have been lost. Patients are not worse. The treatment is conservative and inexpensive and if there is no progress, that is regarded as a valuable diagnostic step, ruling out joint dysfunction and various muscle problems.

Conclusion:

1. These results were first published in 1983.

2. In January, 1984, the Ontario Workers' Compensation Board gave as its reason for not establishing chiropractic care in Downsview that the chronic cases were beyond the scope of chiropractic care, frankly, on the initiative of the Ontario Chiropractic Association.

4. In paragraph 3, Dr. Kirkaldy-Willis wrote to the Ontario WCB contesting this.

4. There are various communications and, following that, Dr. Bob Mitchell, then executive director of medical services at the WCB, who had been to conferences—we had invited him there and he had heard Kirkaldy-Willis speak—announced that chiropractic treatment would commence at Downsview at the end of 1986.

5. On October 23, 1986, Kirkaldy-Willis came to Downsview to address medical consultants. I was present that day. He was received in their midst with the deference that is accorded to someone who is truly a lion in his field. He was brought to Downsview in preparation for the commencement of chiropractic services. It was no big deal. It was just going to be a trial of chiropractic services there.

The second part of paragraph 5 is the most significant. Certain Downsview staff—medical and physiotherapy—felt their positions threatened and the political results of this have been treatment totally shelved in favour of study and research, it was said. A lot of cosmetic steps were taken to set up research protocols, but nothing was approved or under way.

Politics are frustrating the commencement of a proven major benefit for injured workers and the compensation system.

Mr. Chairman: You are giving politics a bad name.

Mr. Chapman-Smith: Yes. I am going to have to be very careful, aren't I?

Mr. Wildman: We believe it to be a honourable profession.

Mr. Chapman-Smith: As I do with law, but we all have our difficulties. Might I pause just to tell you a tremendous joke I heard about lawyers recently that you might like.

Mr. Chairman: I probably would.

Mr. Chapman-Smith: They are starting using them in Florida, I am told, in medical experiments instead of white rats. There are three reasons for this. First, there are more lawyers than white rats. Second, laboratory technicians get rather attached to white rats. Third, there are some things that a white rat just will not do. They contested that heavily in court.

Mr. Chairman: Tomorrow is the chiropractor jokes.

Mr. Chapman-Smith: I now wish to turn to exhibit C, which is a recent letter, dated April 22, 1988, to Dr. Donald Henderson who is the immediate-past president of the chiropractors association. It is a letter which you could see is destined to make his blood boil.

He is asking why it still is that chiropractic services are not even being investigated in any way or used, not even a trial. Look at the third paragraph:

"Generally speaking, clinics participating in the WCB regional rehabilitation program do not manipulate patients. This is a clear definitive statement"—none of us are sure why, but they do not apparently. "They"—and it does not say who "they" are, certainly no one with anything like the authority of Kirkaldy-Willis. We do not know whether it is anyone who knows the first thing about spine manipulation but they, whoever they are "advised me that there is no evidence in the literature on the lasting efficacy of chiropractic..."

R-1600-1 follows



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~~certainly, no one with anything like the authority of Kirkaldy-Willis. We do not know whether this is anyone who knows the first thing about spinal manipulation, but they, whoever "they" are, advised me that there is no evidence in the literature on the lasting efficacy of chiropractic or other forms of manipulation.~~

1600

We have just been through some excellent Canadian evidence from an impeccable source that the Workers' Compensation Board has been introduced to and was going to act on three years ago. But that is all history. It is gone. There is no evidence.

It was emphasized to me—again we are not all sure by whom—that manipulation, although it is effective with certain patients, has not proven useful for the type of patients that are being seen in the regional rehab program who, as you will be aware are sub-acute and chronic patients, patients who have not responded under their first line of therapy.

Again, this is exactly what Kirkaldy-Willis is doing—working with sub-acute and really chronic patients.

I could go on, but it is going to get prolonged. The whole of the letter is there. It all carries on like that. It amounts to a total whitewash and a failure to investigate.

Chiropractors will go home and say, "No more," if their services are used and investigated and found not be effective or cost-effective. They simply ask that they be used as every other therapeutic approach is within the WCB services.

It is time that we got away from all this esoteric argument down to an injured worker, and that is Exhibit D. We have two pages here. I regret having to do this, but let us walk through this a little bit.

Christopher Martin was a streetcar driver for the Toronto Transit Commission. On August 4, 1987, he suffered whiplash injuries. He was off work for just two weeks resting and taking Tylenol. He went back to work, but upon driving his car he developed much worse pain, stiffness, and severe headaches, and went off work on August 24.

"I first say my family M.D., Dr. Ruderman at Women's College Hospital and he referred me for physiotherapy I improved steadily—treatments were heat, neck movement or mobilization, and a home exercise program."

He was still off work so the WCB required an orthopaedic exam and X-rays. That all seems quite sensible to me. He was sent back for more physio with weight-lifting exercises added. Then he went through a period where he was just was not improving at all.

In the middle of paragraph three: "I was now anxious to get this solved and back to work, and I decided to see Dr. Lu Barbuto, a chiropractor. This was on the advice of my wife, an insurance adjuster who had heard him speak at a recent seminar." Dr. Ruderman gave the appropriate note. There was need for

~~Mr. Chapman Smith~~

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referral in this case. You will appreciate that patients can choose chiropractic care, but if they have gone to a medical doctor first, they must be properly referred, and that happened here.

"I saw Dr. Barbuto for six or eight weeks . . . and he was a great help. He treated me with heat, electrotherapy, manipulation, and he went through and approved various exercises I had originally got from Women's College, especially isometric exercises I was doing to strengthen my neck muscles. The muscles in my neck, right shoulder and right arm were much more relaxed. I was getting better movement all around, was back to normal sleep, and in late March expected to be back driving" very shortly.

I regret I do not have the attached letter, but he says: "I then got the attached letter dated March 15 . . . from Mr. Glen Carmen at the WCB saying that I should go to a special Behavioural Health Clinic On receiving this I phoned Mr. Carmen, explained that I was getting chiropractic treatment two times a week, was now getting over my problem well, and expected to be back to work shortly. He explained that I would have to go to the Behavioural Health Clinic and that I should stop my chiropractic treatment. This seemed wrong to me but I wasn't in a position to argue.

He went to this clinic two times a week. I am not sure about the cost here. I have heard competing figures, but I can tell you it is a heck of a lot more expensive than chiropractic care.

From his point of view, in the second line, he said: "Basically the clinic was a waste of time After the first three weeks in which I deteriorated quite a bit—getting more muscle tightness and pain in my neck, and my right shoulder and arm beginning to lock and ache again—I headed back to Dr. Barbuto to continue with what works."

Then he describes the Behavioural Health Clinic. I do not think we need to get into that now. Basically, he is saying that none of it seemed relevant to his problem. It was all a bit hopeless.

Then he talks about it. You can go through and see some of the things that these new clinics are doing.

In the last two paragraphs he said: "I have now been back with chiropractic treatment for about three weeks and feel really good. My only remaining difficulty is with my neck on turning" That is a problem for him because of his driving work. However, that has improved, too.

~~The conclusion what he~~

R-1605 follows



Mr Chapman-Smith)

~~... last two paragraphs. "I have now been back with chiropractic treatment for about three weeks and feel good. My only remaining problem is with my back on turning and that is a problem because of his driving me to the clinic."~~
Imp. In conclusion what has helped me has been active therapy, first the physiotherapist and then more especially Dr. Barbuto. The clinic did nothing etc. It may be that the clinic would help others but it was too vague and general for me."

That is meant not as a particularly impressive statement and I have not got Mr. Martin here. That is just a recent statement from a worker who is fed up with being off work, who seeks out what works for him and it happens to be chiropractic, and I am not saying it will always be a chiropractor that is going to work, but he is into that, has his sights fixed on when he is going to return to work and suddenly the bureaucracy arrives.

That, of course, is a very common experience for chiropractors and their patients, the whole time, province wide. One of the major problems here, and I do not want to get into that at length today because I do not want to emphasize chiropractic issues so much as the issues that relevant to the system and the workers.

The major difference here, you see, is if he had been, as he was earlier, attending a physiotherapist, after six to eight weeks the physiotherapist would have called up on the phone and said, "Could I have another eight weeks?" And the Ontario Workers' Compensation Board would have said, "yes." And he would have carried on and got well. With Barbuto, after six weeks he gets a letter from the WCB saying: "Under chiropractic care you should recover in six weeks. Now go and do something else." The chiropractor tries to write a report, tries to call the WCB, tries to say: "This is a long-standing problem. There is great success here. I almost got this guy back to work." But the WCB says, "Whup. Your six weeks are up."

There just needs to be a lot more logic. What I am here talking about today is not seeking your assistance in correcting all these relatively petty issues, but basically putting chiropractors into the system so that all these health professionals work together and then all these all these other things will solve themselves naturally. Everywhere around the world where chiropractors get together in a working environment, all the problems go away. During the stand-off they are magnified.

So to go back to the main text, if I may, and to summarize in just three short paragraphs everything I have been saying under B. I have this prepared and written in front of you under paragraph 2.

a) The WCB has clear evidence from a internationally renowned Canadian orthopedic surgeon and low-back researcher of the 'lasting efficacy of chiropractic manipulation' with chronic patients. In focussing on chronic, obviously the acute patients are relatively easy, but it is the chronic ones that are the cost and that presumably must concern you most. The WCB casually denies that there is any such evidence.

b) The regional rehab program is for sub-acute and chronic problems. It is said that manipulation has not proven useful for these patients and again that is contrary to the research. It is a pointed observation, is it not, at

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the top of page 3, you cannot say something is proven useful, here chiropractic treatment for these conditions, when you have never even given it a trial. It is that disappointing.

c) Mr. Martin's statement is given as a typical example of a worker keen to return to work and I know that to really nail that down and for you to be satisfied that that was so you would have to see him and cross examine him. I understand that. I have spoken to him and you have got his words there for what it is worth. He is progressing well and then frustrated by maybe a well-intentioned but a bureaucratic and incompetent meddling in his rehab.

This all leads to this conclusion. 1. Today there is widespread cooperation between the chiropractic and medical professions. I have put this into the conclusion because I do not know how much any of you know about chiropractic. I did not know what a chiropractor was 12 years ago and neither did my two medical specialist brothers and then I suddenly got involved in this whole thing. The world has changed in the last 15 years.

Attached as exhibit E I have got an article that could not have been written even two years ago. It is fresh out in the Journal of the Canadian Medical Association. You would not look to the journal of the Canadian Medical Association to find anything useful on chiropractors you might think. This is basically saying that the world has changed and that physicians' opinions are changing. They, of course, give, what I would call, sword-rattling opinions as well as the helpful ones, but essentially you have a number of specialists there and a couple of them from Ontario...



1610
follows

(X) Chapman-Smith)

I would call sword-rattling opinions, as well as ~~the~~ ~~one~~, but essentially, you have a number of specialists ~~from~~ ~~from~~ Dr. Olgivie from Hamilton, an orthopaedic surgeon, Dr. Levy, who is with the Hamilton Tiger Cats, Dr. Roy from Quebec, others, all saying manipulation has got to be tried, it has got its role, chiropractors do have a role, they take away a lot of the back pain, they work as effectively as anything, says Dr. Olgivie in Hamilton. Chiropractors work is effective as anything. That is in the CMA journal, which is one of the most negative environments for comment on chiropractic.

1610

Then I have also attached a copy of the May issue of a publication that I am sending out internationally myself, and it is a little bit unusual to be referring to one's own work, but I will tell you why I have attached that. If you look at page F-2 and you look at the editorial board of the chiropractic report, you will see that on this publication, which is widely read by MDs and chiropractors and lawyers and others internationally, we have Scott Halderman, who is an neurologist as well as a chiropractor. He was originally a chiropractor, now one of the most respected authorities worldwide in the whole area of low-back pain; John Mennell, whom I think you can say, without doubt, is the most famous medical manipulator in North America, and here he is on the editorial board of a chiropractic publication; Aubrey Swartz is the executive director of the American Back Society, an orthopaedic surgeon in California, and then William Kirkaldy-Willis is there too.

I am trying to show you that in the real world out there there is a huge degree of co-operation today, which of course is good for all of us as potential patients. Then the text of this report deals with two Canadian books this year, beautifully showing how good it is for all of us when these two professions co-operate today. One is Kirkaldy-Willis' last book which has got chiropractic content. It is basically a medical text but with the chiropractors there in their areas of expertise. Then there is reference to a second book by an Ontario MD, David ??Imrie and an Ontario DC, Lu Barbuto, which is coming out this summer, called Back Power. Its whole message is what can be done for patients if these two professions co-operate, so I start my conclusion by pointing out that there is widespread co-operation in 1988 between these professions.

Two, this co-operation, obviously in the best interest of patients and shown by much study and experience to cut compensation costs in half, is nowhere more conspicuous by its absence than at the Ontario WCB. Recent history shows that, and I will use the relatively mild phrase, external guidance, is required to change the situation, and it is suggested that the standing committee should, one, call for a study of WCB records for the most recent year available to determine the comparative cost-effectiveness of chiropractic and medical management of claimants with low-back injuries. That is said blind. The people I represent do not know what those figures are going to show. They are entirely confident of what they will show. They have asked the WCB for years for these records and they have been fluffed off. I come right back to my opening remarks, this is what the cost in the system is all about, and they will not even look at it. Surely it is time someone said, call the figures and give us a look. They are all there on the computer.

Second, call for the WCB to use chiropractic services within its treatment facilities at least for a trial period to determine whether or not

~~Mr.~~ Chapman-Smith

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the benefits proven elsewhere can be repeated. With respect, I cannot think of anything more reasonable, both from the perspective of workers and from people who fund the system and, obviously, also openly from the perspective of the people I represent. This is important, and I suggest entirely reasonable.

With those comments I will close and invite questions either to myself or to Dr. Koch, who can give hands on, so to speak, experience with these claims.

Mr. Chairman: Thank you, Mr. Chapman-Smith. I should have pointed out in the beginning that we have in the room today a number of injured workers who were at the big meeting on Monday afternoon over in the MacDonald Block. We welcome them here. I think, ~~if~~

1615-1 follows



(Mr. Chairman)

~~I should have pointed out at the beginning that we have in the past had a number of injured workers who were at the big accident. Most of them were in the Macdonald Block and we welcomed them here.~~

I think that if we ask, perhaps it would just be interesting, how many of the injured workers here today have back problems? Would you put up your hand if you have a back problem. There are a lot of potential customers out there for you chiropractors. We know, as MPPs, too, that back problems are by far the biggest problems and the statistics back it up.

Is there not chiropractic service at Downsview rehab centre now? In this group, you might be talking to the converted. Not everybody was on this committee last June but some of us were and in our last report, a year ago now, our recommendation 7 under rehabilitation was ?? "chiropractic services should immediately be established at the centre." So the committee was convinced that would be a useful thing to do. You have an ally here, although some of the members of the committee have changed.

I would ask you a couple of things, though. First, you say that the board has never looked seriously at back pain as a problem. They would argue that they have. I can remember they set up a committee—I cannot remember the name of it—that was supposed to, at least, look seriously at back pain because they know that back pain is their big problem as well. So why would they not, as a board, take a serious look at the problem. It is costing them so much and causing them so much aggravation.

Mr. Chapman-Smith: There is absolutely no doubt that they will have done a lot of good things, but if you go back to your model of private enterprise, I suggest that the facts speak for themselves. If one of the major players here, the chiropractic profession, has come in and said, "Pool your figures and let's see," and they have consistently refused ever to do it, how serious are they?

If the chiropractic profession introduces their leaders to quality interprofessional conferences and takes them to the point where they see the value of giving chiropractic a trial, that because of some political resistance in the trenches, they ditch the whole thing, how serious are they?

Obviously, there has been some good work done, but, really, to what level and with what urgency?

Mrs. Marland: Excuse me. I do not think ??you have ??still answered the chairman's question. It was directly, are there chiropractic services being rendered today?

Mr. Chapman-Smith: Sorry. There are not.

Mr. Chairman: Merike Madisso who is our research person with the committee just pointed out to me that with all of our recommendations last year, the board responded to all of them and this is how it responded to that one that says chiropractic services ??need to be established at the centre. Keep in mind that our recommendation was chiropractic services. They said the following:

?? "The role of the Downsview rehab centre and the nature of services

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provided have been a subject of review by the Downsview review team appointed by the Ministry of Labour in November, 1986. The resulting report contained wide-ranging recommendations about the future role of the centre. Subsequently, the Workers' Compensation Board staff have undertaken a major review of the services and facilities at the centre. As a result of all of these deliberations, the WCB executive will be bringing forward recommendations on the future disposition of services and facilities at Downsview rehab centre for consideration by WCB board of directors."

It sound like full circle to me. The board is coming before the committee next Wednesday. It is certainly one of the questions we will be asking them.

Ms. Collins: I have a question about the WCB studies in the United States and I think you also referred to WCB in Saskatchewan. Do you have copies of those studies that show there is a 40 per cent to 50 per cent saving in treatment costs by using chiropractic services?

Mr. Chapman-Smith: I do not have them on me. I can have them within 24 hours. I have them in my room.

Ms. Collins: Or any other details you can give us at this time. It may be useful when we talk to the WCB on Wednesday.

Mr. Chapman-Smith: Those have all been handed to the WCB on more than one occasion in the past, as you can imagine. The best studies in terms of protocol and independence and everything else, are a study in Wisconsin in 1978 which I will get for you and then just published there was a study out of Florida which is the first half of a study, really, and it is going to be impressive when it is finished because it is based on very much more sophisticated computer records in the Florida WCB system and it is very recent.

R-1620-1 follows



(W. Chapman-Smith)

~~the first half of a study, really, and it is going to be impressive when it is finished because it is based on very much more sophisticated computer records in the Florida WCB system and it is a very good~~

1620

If I may, just in responding to the remarks you are making, draw attention to the fact that I know that the WCB has been in a time of turmoil and that a lot of constructive thinking is going on. What in fact has happened is that the emphasis has been taking these chronic cases out of Downsview in regional treatment centres.

The chiropractors have said, "That is fine and that would be a very sensible for us to play our limited role in the system." The response has been, "We are not going to use any manipulation in those centres."

On paper that is what the WCB says is the current situation and I have two comments on that.

One, why on earth not? Two, we have evidence that is not right and Dr. Roberta Koch could speak personally to that evidence if the committee was interested. So that some manipulative service are in place in these centres but there has been no invitation extended to the chiropractors at all. It is being whitewashed ??again.

Ms. Collins: I would like to hear a little more about that—

Dr. Koch: As David mentioned, the chiropractic profession was told that there would be no manipulation at these regional rehab centre and if such manipulation were to take place that it would be done by chiropractors.

Dr. Don Henderson and myself went to visit a regional rehabilitation centre which exists in my town of Hamilton, the ??St. Joseph's centre, and we got a tour of the centre. I got talking to the physiotherapist there. I asked her what her approach was to patients and she outlined it to me and I asked her pointedly if, in fact, there was manipulation taking place or immobilization. She told me that in fact there was, which was something that was very surprising to all of us when we left.

Subsequently, we approached Dr. Mitchell at the compensation board and mentioned to him that we were wondering if there was manipulation going on at these centres and he wrote a letter to the centres inquiring. I have a letter with me from ??St. Joseph's Rehabilitation Centre stating that they are lucky enough to have a therapist who is trained in manual therapy at this time and meets their needs for manual therapy intervention with their patients.

This is very disappointing to us as chiropractors because relief does come from manual therapy, often after years of medical treatment and is a single modality with the most effective evidence of effectiveness. Chiropractors have pioneered this therapy and do it very well and we like to be able to offer this to the workers in these centres.

Ms. Collins: Would you have a problem, though, with a physiotherapist providing that service in all centres? Should it only be chiropractors that provide it?

Dr. Koch: Chiropractors have a problem with anyone practising manual therapy who is not qualified to do so. Our association has inquired of the physiotherapy association on a number of occasions what their qualifications would be to practise manual therapy. We have yet to receive a reply. From what we know, their qualifications are extremely limited and very inadequate. Unless they can show us otherwise, that is what we are assuming.

On that basis, we have a huge problem with physiotherapists practising manual therapy when, in fact, we do have the qualifications and have had them for years and do it well. David went through the study from Saskatchewan which showed that in fact in that trial it has been shown that chiropractors are the ones manipulating out there and that success came from chiropractors applying the manipulation.

Ms. Collins: In any event, this physiotherapist in Hamilton is the exception in that.

Chapman-Smith: I think that is the comment that I wanted to make, that what I see not only in Ontario but this can be seen throughout North America and throughout the western world is that there certainly are in medicine and physiotherapy people who I would describe as likely early chiropractors. They were not really trained that well but by dint of experience and practice and years and a particular interest in this, some of them have become very skilled. But they are the exception and there are very few of them around.

I will not say much more. If you really want fertile information on this, you should go to one of the various people in Ontario who are trained in

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(Mr. Chapman-Smith)

~~and there are very few people who are trained in this, you should go to one of the various people in Ontario who are trained about disciplines. There are a number of people who trained in physiotherapy and chiropractic and can really tell you about all of us.~~

Ms. Collins: Back to the study that you have, I just wondered what chiropractic services provided in Saskatchewan and other provinces are like compared to Ontario. Are we the exception with our WCB system and the services we provide?

Mr. Chapman-Smith: Again, to ameliorate the comments we are making about the Ontario WCB, I want to broaden it. I have appeared in front of WCBs in a number of countries and it is a common problem everywhere. I do not know how much to say, but I can indicate obviously that a workers' compensation board is not a pleasant environment for people who are not in control. It is a last bastion, if you like, and a very conservative, rigid environment.

I have here, and I am quite happy to hand them out if you want to without even getting into them, a number of letters, which just show the extreme prejudice against chiropractic within the board. If it is helpful for you to have some letters, I will leave them here and you can look at them, but without going into detail, the basic thing of someone who is going well under chiropractic care going in for review and just getting hounded to the point of tears by people saying, "Why are you seeing these chiropractors?" But that is not just an Ontario problem. That is a systemic problem, but it is one that those of us outside it need to fight with vigour, I suggest.

Ms. Collins: I would appreciate copies of those letters and the one from Hamilton.

Mr. Chairman: I think you had also requested the study from Saskatchewan.

Mr. Chapman-Smith: Sure.

Mrs. Marland: I would also be interested in having before the committee someone who is trained in both disciplines as Mr. Chapman-Smith has suggested. We might well benefit from that.

I must say at the outset that I am sitting here somewhat astounded by what you have told us this afternoon. I must express on my own behalf my appreciation for the frankness and the clarity of your presentation, because I realize it is a complex subject. I also realize whom you are representing, but it is very interesting for us because we are sitting here representing the best interests of injured workers in this province. That is what this whole hearing is about because we are very much aware of the fact that the present system is not working in the best interests of injured workers. It may also not be working in the best interests of the employers because of the major factor, which is cost and how ironical sitting here listening to your presentation.

I did not know what was going on at the board. I was not on this committee last year. As the chairman said, even he thought, by his question,

Mrs. Marland

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that last year's recommendation had been a solution to a problem which the committee knew existed a year ago. I think that is pretty irresponsible that a year later this committee is sitting here going over something that obviously the committee thought by its recommendation last year might have been resolved.

I also think that it is pretty—and I do not want to either overdramatize my opinion or to say something which is not factual, but I think it is totally against the rights of injured workers not to have the choice of medical remedy to their injury. The very fact that the Ontario health insurance plan funds chiropractic service is in itself in this province a recognition of the chiropractic practice as being a medical remedy.

Having said that, first of all, to comment on your recommendation A on page 3 where you are suggesting that the records for the most recent year be available to determine the comparative costs, I recognize that would be—I mean I do not know who would do that. That would be a very expensive, in-depth study to retrieve those records. We have already had two or three weeks of sessions of this committee where we have heard how archaic the retrieval method is--

R-1630 follows



I mean I do not know who would do that. That would be a massive in-depth study to get those records. We have already had two or three weeks of sessions of this committee where we have heard from the records in itself for individual injured workers' records. That is a frustration item on its own.

1630

Where you talk about the cost-effectiveness of chiropractic and medical management of claimants with low-back injuries. After the fact it is pretty hard to...you can equate the cost-effectiveness, but I realize that after the fact with every individual it would be hard to weigh the medical management and the chiropractic treatment in terms of the best interests of that patient.

Mr. Chairman: Are you anticipating a brief response?

Mrs. Marland: What I am saying is that I have some difficulty with that recommendation. I wondered whether, obviously because you have it there, you must have some sense about how much work would be involved. In fact, is what you are saying that the chiropractic association would be willing to do that evaluation based on pure medical records of those payments?

Mr. Chapman-Smith: I think it would be wrong for the chiropractic association to have the onus of doing it because it would be seen as biased. What generally happens in a situation like this is that an independent investigator comes in and then board staff help. The chiropractic association would be grateful to have someone on the committee sort of overseeing and seeing what is happening, someone who is experienced in the methodology. That would be ideal, but you really want some PhD who is used to doing all this sort of epidemiological stuff to do it.

As far as difficulty after the fact, not at all for this sort of purpose. Yes, for clinical results of treatment because that needs what they call a prospective protocol and we can get into the technicality, but it has been done often before. You obviously exclude the surgical cases because that would make the comparison unfair.

Mrs. Marland: Right.

Mr. Chapman-Smith: There are a whole lot of other things you do so that you get an equivalent population, but there are all sorts of interesting facts you can find, like the percentage of strains that were sent through for surgery, depending upon who they first chose. That is one of the very big interesting figures that has just come out of Florida. In short, the protocol is there to do this. Whilst it is quite expensive, it is one drop in the bucket compared with what is being spent.

Mrs. Marland: Right.

Mr. Chapman-Smith: It would probably generate a sensible look at retrieval systems.

Mrs. Marland: I think that recommendation B is almost a repeat of a year ago and obviously is one...I mean personally, I would support it very strongly.

Mrs. Marland

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I want to deal directly on another page, page 3, on ??recommendation B-5, page 3. In your conclusions there, the statement, item 5, ??"Certain Downsview staff, medical and physiotherapy, felt their positions threatened and the political results of this, together with changes in WCB leadership, have been....

Mr. Chairman: Sorry. Where is this?

Mrs. Marland: Page 3 of ??B-5 where the other conclusions are listed.

Mr. Chairman: Item on page B-5.

Mrs. Marland: I am reading item 5.

Mr. Chairman: Right. OK. Thank you.

Mrs. Marland: That is a very strong statement. You have it down here in black and white that "...the medical and physiotherapy staff felt their positions threatened." I would like you to enlarge on that statement.

Mr. Chapman-Smith: First, there was a concerted effort within the physiotherapy profession province-wide, which resulted in many letters and signings of petitions and all that sort of thing.

Mrs. Marland: By members of that profession?

Mr. Chapman-Smith: By members of that profession.


Mrs. Marland: About what went on at Downsview?

Mr. Chapman-Smith: About how inappropriate it was for there to be any decision to institute chiropractic services.

Mrs. Marland: Really?

Mr. Chapman-Smith: Really. Second, I have not seen the document itself obviously. It would be something that you could ask the WCB management about. I presume it was directed there. I, myself, sat in meetings out at Downsview with people who were in positions of executive control in that hospital and had an opportunity to—

R-1635 follows



Mr. Chapman-Smith

~~For myself, I am not going to mention the names of people who have a position of executive control in that hospital and had an opportunity to clearly discern very hostile attitudes. I would prefer not to get into mentioning names and details here.~~

Mrs. Marland: No, that is fine. OK. You had the personal experience and you feel that there are petitions and letters from the physiotherapy and the Ontario Medical Association?

Mr. Chapman-Smith: I cannot implicate the OMA at all. I do not know about that.

Mrs. Marland: OK. We can ask the WCB that question. The fact that you are saying that the treatment was shelved in favour of further study and research and yet you know no research was approved or under way. Now when we asked them that, which is really dealing with their answer to this recommendation of the committee a year ago, there was an incredible amount of words with a nonanswer in it that our chairman just read. Is there any way that they can surprise us by saying, "There has been research."

Mr. Chapman-Smith: You are little bit cautious on a question like that of saying no, but I think I can say no, because there was anything, by definition, the chiropractors would have to know about it. For example, they looked for a brief while at setting up a proper protocol for the study. An expert from McMaster University whose name has—

Interjection: ??Tugwell.

Mr. Chapman-Smith: Yes. Dr. Peter ??Tugwell, who is very well known in this field, was approached. He was assisted by a masters student who was a chiropractor who happened to be under him at the time and they got working on this, but that ended where all other initiatives have ended. There have been no subsequent attempts involving the profession at all to even begin designing a protocol.

Basically, the thing that may be explained to you, if I can give you a little bit of ammunition, the thing that may be explained to you because I have heard it explained so often before is how important it is to design these things properly and how difficult it is. It takes time and the chiropractors are too anxious and we will get around to it and all that sort of thing.

The advice of experienced sensible men and women, and it is always the advice of Dr. ??Kirkauldy Willis, is that what you do with something like this is you start a treatment service in a small way where people get to know each other and relate and the fences come down. Over the first six months, co-operatively you work on designing what you are trying to do and how it is going to work. It all happens naturally and it unfolds. Within the first year, you have it all operating completely smoothly. You know who is responsible, who the patients are, the protocol for your study, how the results are being recorded, etc. If you staff in a small way, that all happens naturally.

The best filibustering technique that exists in the world is to talk about the immense complexity of doing this and the need to ??rope in experts from everywhere and how long that takes.

Mrs. Marland: One last question. I guess the thing is that I personally have far too much respect for the medical profession in this province to believe that members of their profession in general, members of the OMA as a whole, would really be supportive of this kind of archaic control. I mean it seems to me that if it is the OMA and the physiotherapists, then the fight should have been before the Ontario health insurance plan decided that chiropractic practice was something that patients in this province were entitled to government funding for. Now once OHIP started funding chiropractic services, therefore, recognizing it for the benefit of patients, then that battle, that debate was over.

I guess what I would ask you is, is it possible that there is a very small bastion of control being held here at WCB with injured workers around the province who are really a captive audience I was going to say, which is not the word, but they are captive patients. They are there because they have a very serious physical problem. ~~Is it possible~~

R-1640 follows



(Mrs. Marland)

~~It was going to say, which is not the word, but they are certain patients because they are there because they have a very serious physical disability.~~ With the descriptions that you have given us about how the medical profession is changing, and we all know on this committee how it has changed in the last decade towards chiropractic practices, is it possible that we have a few in a very small group who are in fact causing the problem whereby everybody suffers? The patient suffers. The employer suffers because of protracted costs. We suffer because the whole system is not working for the benefit of the people in Ontario.

1640

Mr. Chapman-Smith: It is becoming more and more of a minority problem all the time. What we have suggested this afternoon is that it really is right out of step with what is happening broadly in the medical profession in the world generally. So the answer is yes, that is a fairly narrow problem but a potent one.

When the Canadian Medical Association established a consumer task form, which you may recall was led by Joan Watson about three years ago, they really, in an impressive way, gave it free rein, I suspected that it would have a lot of medical opinion written on it, but they gave Joan Watson and all the lay persons on it a free rein and its major recommendation and comment throughout out that whole report was the inefficiency in the whole health care system that comes from conflict and the fight of vested interests and the conflict was essentially in two areas; (1) federal-provincial in governmental terms and (2) between the health care disciplines, and those ?? trying to hold on to it. Everyone makes mistakes and is arrogant in this area, but I suggest it is the role of committees like this and outside players to try to get rid of those obstructions and have what is natural occurring.

Mr. McGuigan: I guess I will just make one comment on Mrs. Marland's thoughtful presentation. The chiropractors are not fully accepted in the Ontario health insurance plan in the fact that there is a limit on the billing. It is something like \$200 a year.

Dr. Koch: it is \$220 per year and, in addition—

Mr. McGuigan: A certain number of visits.

Dr. Koch: A certain number of visits per year. That is right. It is 22 visits per year.

Mr. Wiseman: May I just ask a supplementary to Jim's?

Is the \$220 all for manipulation or part of it for X-ray? In the 1970s, because there was some concern about X-ray particularly in women of child-bearing age, rather than so much for manipulation and so much for X-ray, if a person wanted to, it would all be for manipulation. Does that still take effect?

Dr. Koch: No. That is the total package that is given to each individual.

Mr. Wiseman: To use as they wish?

Dr. Koch: Yes, if a chiropractor wishes to take X-rays on a patient, it comes out of that \$220.

Mr. Wiseman: But they could use it all for manipulation if they wanted to?

Dr. Koch: They could, yes.


Mr. Chapman-Smith: With respect, I think they can. There is an amount reserved for X-ray—I am wrong, sorry.

Mr. Wiseman: It was in the early 1970s and then we changed. I wondered if they had changed it back.

Mr. McGuigan: I have a question that I may be asking of the wrong people, but because you are in the profession presumably you have done a lot of reading on this and you may be able to help me out. I asked this question before when we were working on injuries and problems in the mining industry.

From my own experience as a farmer which goes back to a kid in the 1930s, we had some pretty archaic methods of working. People were lifting loads that today we would say were extraordinary. You would not put up with it at all. Lifting 100-pound bags of potatoes, 100-pound bags of fertilizer, putting them up over their heads, using humans to do what we do with elevators today, and yet, among . . .

R-1645-I follows



(Mr. McGuigan)

~~100-pound bags of potatoes, 100-pound bags of fertilizer, putting them up over their heads, doing human labor what we do with elevators today, and yes, among those people—I have known many of them—they did not seem to have any back problems. I am wondering what changes we have brought about in our society, perhaps in the design of equipment, the way we work—~~

Mr. Wiseman: Lack of muscles.

Mr. McGuigan: That is possible, the lack of muscles, because these people who used to do that very terrible type of work were really muscled. They were conditioned for it. Another thing I guess, just by way of explanation, they did not do that single type of work day in and day out throughout the year. The work changed as the seasons progressed. Whereas today, we have people doing the same job on the same line throughout the year.

I am wondering if you have observed or read or if you have any idea why we seem to be having these low back problems? In our age, we did not have them. At least, there is no evidence.

Dr. Koch: I think that is a very complex question that you cannot answer very simply, at all.

In my experience and practice, often injuries come from repeated actions in one direction, over and over again, after 10 years something happens or maintaining one position for a long period of time. Often when we send a worker back to work, we send them back to work recommending a variety of positions rather than one position for a long period of time. Maybe it is the specialization of society. To answer that properly would take—

Mr. McGuigan: Do you know of any studies that have been done on that?

Dr. Koch: There are all kinds of books on the ??ergonomics of the workplace, analysing the way people sit, the way people work, that try to provide answers to that kind of a thing.

Mr. McGuigan: In your own opinion, it could be tied up to the people doing a repetitive job?

Dr. Koch: I find that is a lot, yes.

Mr. McGuigan: The figures here on page 1, chronic mismanagement and acute and chronic back pain, under 4A, episodes of incapacity from back pain per thousand persons per year, in 1955, 21.7 for men and eight for women and in 1981, 58.2—an increase about two and a half times—for men and 44.7 for women. That is an increase of about five and a half times. Have you any idea what is behind those figures? You have read them.

Mr. Chapman-Smith: As Dr. Koch says, it is complex because there are so many factors, but a comment that I think is useful is that the problem with all third-party payment system, with all judicial systems with assigning cause is that in a way there is a built-in artificiality. As this book explains so well, and in fact I have analysed and you can read some of it in the last exhibit in the material I have given you, there is a natural history in life for low back pain.

If you look in terms of our population's epidemiology, there is a natural degeneration in the spine which leads to likelihood of injury, likelihood of pain, disability, in the middle of life, quite independently from what you are doing. Then as you get older, as you get more degeneration and a greater rigidity builds in, you lose some of the risk and some of the pain and you do not get as much pain.

On top of that whole underlying natural history, you get work habits. The recent literature lays great emphasis upon the role of stress in provoking back pain, just anxiety, stress. I think in these figures here, you have seen peoples leading a more stressful life and being reflected in, not psychological in any sense and I know the appeals tribunal has been dealing very well with what they call psychogenic pain, but it is real pain and it is pathological as well as having the stress and anxiety component.

But you have to go to all of these areas and if you go any major back conference today, what people will say is that the problem comes out of trying to pigeon-hole it and say it is the bone or the muscle or the ligament or the nerve or the psyche or the environment...

R-1650-1 follows



(Mr. Chapman-Smith)

will say is that the problem comes out of trying to pigeon-hole it and it is the ~~the muscle or the ligament or the nerve or the psyche or the environment~~, that all of these inter-react. The problem for the Workers' Compensation Board is that it is almost set up to pigeon-hole it. That is just an overview of how complex it is.

1650

Mr. Wildman: I would like to pursue the central question you have been raising about perceived prejudice at the WCB. It is correct that the Workers' Compensation Board will cover chiropractic treatments for an injured worker. As you indicated earlier, if an injured worker has seen a physician, then he must be referred to a chiropractor if he wishes to have chiropractic treatment. Is that not correct?

Mr. Chapman-Smith: Sure.

Mr. Wildman: And those treatments will be covered by the Workers' Compensation Board.

Mr. Chapman-Smith: Either referred or approved by the board and that happens on occasion.

Mr. Wildman: That was the other thing I was going to point out, that the board in fact does approve. There have been questions in my area, for instance, about whether a worker should be allowed to go, in this case a francophone worker, a more distant chiropractor who speaks French, as opposed to a closer chiropractor, but they approved the chiropractic treatments.

If the board approves chiropractic treatment for a person who is experiencing acute back pain, what would be the explanation or the rationale for saying that you can have chiropractic treatments out there, but you cannot have it at the treatment centre in Downsview? They must have given you some rationale.

Dr. Koch: I think that is the question that many patients ask me when they go to Downsview. We are treating them and they go to Downsview and they come back and they say, "Why is there not a chiropractor there? I would like to see a chiropractor down there." That is a good question.

Mr. Wildman: Is it because they are saying that they are treating long-term patients at Downsview and they do not believe that manipulation has the same beneficial effect in a long-term back pain patient as opposed to someone who has had just an acute trauma and is a short-term patient?

Mr. Chapman-Smith: That was exactly the explanation given a few years ago, which I have referred to in the presentation this afternoon. And a variety of explanations are given, depending upon the season of the year. But there really has never been a convincing reason. It really begs the question, does it not? If you have never had chiropractic services in there and observed them and worked with them and assessed them, how can you say whether they are valuable and what will the effect be?


Mr. Wildman: I understand that. I am trying to figure out the kind of questions I should be asking the Workers' Compensation Board when it comes

back before us on this issue. It seems to me that the surgical consultants, when they are reviewing a case for instance, have to review and evaluate opinions and reports that are submitted by chiropractors as well as other physicians in giving advice as to whether a claim is a legitimate claim or whatever. So they must have some experience in evaluating chiropractors' reports.

Mr. Chapman-Smith: Some. This is a fertile area of difficulty the whole time, as you can imagine, because by training a surgical consultant will know very little about the indications for or what amounts to a sensible course of spinal manipulation. Logically, there obviously should be chiropractic staff involved in that sort of thing, I am not saying only, but involved in educating ?? so that everyone understands.

Mr. Wildman: But certainly out in the community, if an injured worker goes to his family physician and the family physician either refers or agrees to a chiropractic manipulation treatment, then that chiropractor will submit " " "

R-1655-1 follows



(Mr. Wildman)

... then refers or leads to a different type of treatment, then the chiropractor will submit a report to the family physicians, so there is an element of co-operation at that level.

Mr. Chapman-Smith: Oh, sure. The difficulty is, I suppose, that the association has a jaundiced view of it too. We all see our own perspective of it. What the association gets is a consistent stream of letters sent in by angry members, and these are letters from Workers' Compensation Board orthopaedic consultants saying the most ridiculous things about chiropractic care, all the way from it is unproven, it is unhelpful, it is harmful, they should not be doing it or if you are not ready in a few weeks, then get down to your physician to really work out what it is about.

I suppose the association sees the worst side of it. It sees all the hairy letters written by various consultants. Within the whole system you will have a number of orthopaedic consultants in the WCB who have a good appreciation of this and deal with it properly and you will have a much larger number who do not. It is a matter of generation's age, exposure and understanding.

Dr. Koch: I want to say something. At a grassroots level in the community, I personally have a very good relationship with the medical doctors and orthopaedic surgeons in the town who refer patients to me and I send them letters of consultation. Where I run into the problem is at the level of the consultation. Often, what bails me out is this good relationship that I have with the medical doctor in the community, who will say—

Mr. Wildman: To the board.

Dr. Koch: Yes, to the board—"What she is saying is right, so it is OK," and then the board will say OK.

Mr. Wildman: They want confirmation.

Dr. Koch: They want medical confirmation that what I am saying is right, which is really quite absurd. If anybody is going to confirm what I say, it should really be another chiropractor because the medical confirmation of what I say is not really that meaningful.

Mr. McGuigan: May I have a supplementary, Mr. Chairman? Is there a problem about diagnosis? Have you the authority for diagnosis or you do not the authority for diagnosis? I met with some chiropractor over the week and there is a review going on now about all the various players in the system. The chiropractors brought up questions of whether or not they were going to be able to continue to diagnose.

Mr. Chapman-Smith: I am going to answer that from a legal perspective. I have had the opportunity, acting for the association, to research the legislation in Ontario quite carefully ever since 1925 when it first came in. There always has been the clearest duty, as well as right, to diagnose. If you go through the regulations ever since 1925, it is there and if you look at the regulations now, both in what is required in any acceptable chiropractic college and the board exams that must be sat before a licence can be obtained, it is very clear that it is diagnosis in all symptomatology.

Mr. Chapman-Smith

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There have been legal precedents in Canada and in Ontario saying very logically, I think, that anyone who presumes to see a patient straight off the street has that duty squarely on his or her shoulders. That is quite clear under the current law.

However, you are quite correctly identifying a constant source of problems because the suggestions frequently made is by people whom, I really say quite calmly, have never investigated it or not for 25 years or heard it from their medical professor at school 30 years ago. People who have never investigated say, "We do not really think they can," which is at odds with the law, training and all the documented facts. You do not ever see in correspondence from the WCB that chiropractors cannot diagnose. That is what is reported by patients as being said to them by their WCB counsellors.

Mr. Wildman: My impression—at least the impression that you are getting as a profession from the Workers' Compensation Board—is that the board sees chiropractic treatment as an adjunct to medical intervention rather than as a primary treatment—as an extra. Is that a fair assessment?

Mr. Chapman-Smith: I think that is fair. I think that the law says it is one of the worker's right to elect chiropractic care, simpliciter, but the pigeon-hole that the board always tries to...

R-1700-1 follows.



~~(Mr. Wildman)~~

~~... or an extra is that a fair assessment?~~

1700

Mr. Chapman-Smith: ~~think that is fair. I think the balance that~~
~~it is one of the workers' right to elect chiropractic care, simpliciter, but~~
~~the pigeonhole the that board always tries to put it into is something that~~
you can try for a while and if it does not work, we will get down to the
source of the problem.

Mr. Wildman: And then they still want medical confirmation?

Dr. Koch: That is right, and in depth.

Mr. Wildman: That is what I meant by—.

Dr. Koch: That is practically it.

Mr. Wildman: If that is the case, obviously at the local level, when
dealing with an individual patient, a chiropractor on many occasions will
refer a patient who has come to that chiropractor to a medical physician—

Dr. Koch: Exactly.

Mr. Wildman: —or an orthopaedic surgeon, if he finds that
manipulation is an inappropriate type of treatment for this particular case.

Dr. Koch: Definitely.

Mr. Wildman: So if there is that kind of co-operation in the
community among the various kinds of medical practitioners, it would be
logical, particularly when it is recognized by the board for compensation
purposes, for that similar kind of co-operation to take place at Downsview.

Dr. Koch: You are absolutely correct. Chiropractors know very well
what an appropriate trial of treatment would be for a certain type of an
injury or certain type of patient, and a chiropractor would recognize when
that trial is over or it is time to move on. What is not so appropriate is a
third party telling you what you are saying is incorrect or changing it
without being a chiropractor, firstly. If anybody is going to look at that and
make an opinion, it should be another chiropractor.

Mr. Chapman-Smith: Excuse, I wonder if I could just interrupt you?

Mr. Wildman: Okay.

Mr. Chapman-Smith: I would refer you to the second page of the
material I have just give you. There is a letter from the Workers'
Compensation Board recently to Gordon Lawson, who is Toronto chiropractor and
he is treating there; and you will see what is underlined at the bottom: "If"
your patient "is still having a problem she should consult her general
practitioner..." That is completely inconsistent with the law and the system,
but that is written almost ingenuously by someone who is living in such a
climate of that thinking that that has found its way into a letter.

Mr. Wildman: OK. You may not be ??aligned to this; if that is possible, but if that is the case then, fine, do not answer me. But, do you know of other types of treatment for pain that have become more current that are meeting resistance from the Workers' Compensation Board, as well, for instance accupuncture or other types of treatment? Maybe that is an inappropriate question because there are medical practitioners who practice accupuncture. Is this an isolated situation related to chiropractic manipulation or is it a kind of professional inertia that just does not allow for the board to accept new types of treatments for problems that they have to face for a long time?

Dr. Koch: I do not think I can answer that at all.

Mr. Wildman: I did not hear the specific ??answer, but I think we can be quite frank about the fact that the whole subject of chiropractic and manipulation has its history. Chiropractors have got a very colourful and not always good history. Manipulation has always been viewed as an unattractive, unproven and unscientific thing by medicine, even for those within its ranks who have tried it. So figures like ??Manell, ??Suriak and ??Lovett, famous world-wide for trying to get spinal manipulation into favour in medicine have been hounded all their lives and when Suriak, the poor old man died in England a couple of years ago, 90 per cent of the medical profession still thought it was good riddance, and some of that even appeared in the journals.

But what has happened is that in the last 15 years, there has been a complete revolution in a number of things, including the scientific study of manipulation and then, certainly as you see in some of these figures, there is a complete rethinking of medical management. It has been shown that bed-rest does not work and that inactive remedies like pain medication while you wait, are the wrong way to go because people get psychological overlay, and you build chronic problems.

We are talking about an area that is in great flux right now, and I suspect there are a lot of people in administrative positions who are not fully briefed on it.

Dr. Koch: May I just add to that? Chiropractors had a six-week limitation arbitrarily imposed...

R-1705-1 follows.



~~(Mr. Chapman-Smith)~~

~~...and I suspect there are a lot of people in administrative positions who are not fully briefed on it.~~

Dr. Koch: May I just add to that? Chiropractors had a six-week limit arbitrarily imposed them. In order to get an extension for that, what the chiropractor has to do is write to the Workers' Compensation Board and request authorization and provide the backup for this. If you compare this, for example, to even physiotherapy, they have an eight-week limitation, and I believe they can get a verbal extension, which makes it a lot easier. What happens is I write a letter at the five-week mark when I realize six weeks is not enough, and it takes a month or even two months to get the answer back.

Mr. Wildman: All right. Can I ask one other question then? If there is co-operation and recognition, even by the board, at the local level for a patient who elects or needs chiropractic manipulation, do you have evidence that in analysing the claim, the consultants at the board will not accept chiropractors' opinions if they are at variance with the opinions submitted to the board in reports from medical doctors? In other words, if the chiropractor is saying, "Yes, this is a legitimate claim." This person has a lumbar problem and so on and explains it all—his diagnosis and what treatment he can take—yet an orthopaedic surgeon says that he thinks that there is no evidence on the X-rays or whatever that this person has an organic problem, that the board invariably accepts the position of the medical doctor as opposed to the chiropractor.

Mr. Chapman-Smith: This, of course, is a major source of difficulty. One of the appeals in which I have appeared was for working man, Mr. Coutts. The essential details of his case actually appear in exhibit B6 of the material you have. If on reading that, you would like to have other documents from his case, including the letters from the medical specialists, I can let you have them. But, in essence, this was a clear case where a driver had a neck injury and his truck rolled. He had months and months of medical and physiotherapy treatment and he was not better at all off work. Two neurosurgeons said, "You need surgery." He said, "How is it going to go?" They said, "We can't say, but you need it."

His mates at work said, "Try a chiropractor." He had never heard of chiropractors or had not thought of trying it. He went to his medical people and they said, "No way." They actually wrote a letter saying, don't go. He then went to a chiropractor and recovered excellently under conservative chiropractor care. Inside the WCB, the consultants, even faced with the evidence from the medical expert in the field who said it was a wise decision to go to a chiropractor. You can read the reports where they are angry that this has all happened and they say, "There is no way, we will way," and we went on appeal.

Mr. Wildman: Because he did not have a referral?

Mr. Chapman-Smith: And because it was a silly thing to do anyway, and it was risky and everything else. We went on appeal and said this was the most evident case where the board under its discretion should be allowing this. The written decision of the appeal was: "Yes, the chiropractor care was sensible, effective, cost-effective. Pay." That is a well-documented case of

what is a very frequent occurrence.

Mr. Wildman: It is interesting that the act also says, as well know, that when there is doubt, then the doubt is to be given to the injured worker. It seems to me that two professionals are disagreeing about the legitimacy of a claim and there is in fact reason for doubt, and it is unfortunate that the board is not giving the benefit of the doubt to the worker.

Mr. Wiseman: Does the board still meet with the Ministry of Health on a regular basis, as it disciplines—

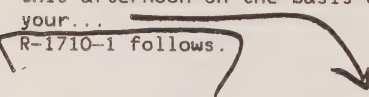
Dr. Chapman-Smith: The Ontario Chiropractic Association board.

Dr. Koch: Meets with the Ministry of Health?

Dr. Chapman-Smith: Yes, with various branches of.

Mr. Wiseman: Have they taken and made the appeal like you have to us this afternoon on the basis of saving similar to what you have given us in your...

R-1710-1 follows.



(Mr. Wiseman)

~~made the appeal on the basis of saving, like you have to do this afternoon,~~
~~similar to what you have given us as your three-page summary at the front,~~
that the back pain and the coughs are maybe cheaper to deal with by a
chiropractor than the other medical profession. Have you taken it to the
Ministry of Health, like they used to do when I was there, to present their
case? If they have, has it fallen on deaf ears or what action has been taken?

1710

Mr. Chapman-Smith: I think it is fair to say that if you look at the
last five-year period of time, most of the evidence as to cost-effectiveness
has been presented in this forum, by which I mean in the context of the
workers' compensation legislation, because it seems like such a natural place
for it to be examined.

You have a body with large funds that should be penetrating this area.
As you will know, when you deal with the Ministry of Health, you tend to
isolate your top four or five priorities for the time and those tend to be
legislative issues.

Mr. Wiseman: The only reason I say that is that if workers'
compensation does not pay for the treatment, or if a person does not get well
with workers' compensation, then it goes right back to the Ontario health
insurance plan again. Is that not right? OHIP has to pick it up.

If it is like you presented it this afternoon, a saving, then I would
think that would be something that should be brought up with the Ministry of
Health so that it could maybe push workers' compensation to follow along with
what you have suggested. If you present a good case to them, then you have a
good ally fighting on your behalf. One way or the other, some level of
government is going to have to pay for the injured workman to be rehabilitated.

Mr. Chapman-Smith: There is one other comment that perhaps I could
make. The nearest that has been done, or the equivalent perhaps, to presenting
it to the Ministry of Health is that there have been strong submissions like
this to the various groups that have sprung out of the Ministry of Health in
recent years.

Mr. Grossman, as minister, had a major policy conference in 1982 and all
of this documented stuff was given then. Recently, there has been a ??Spasoff
committee, all these committees, and it is given to them, the bodies appointed
by the ministry to look at issues of cost-effectiveness and ??rationalizing
system.

Mr. Wiseman: They used to meet—I do not know whether they still
do—on a regular basis every couple of months or something like that. They had
an agenda, and they would forward their agenda to the ministry. I do not know
whether the new government has changed the way things happen, but that is the
way it used to. It would seem to me that that would be another place you
should present, or they should present, a brief similar to what you have here
this afternoon.

Mr. Wildman: I would think the Ministry of Health would have a very
difficult time, though, in influencing the compensation board. Their medical

decisions are their medical decisions.

Mr. Wiseman: Yes, but it gets back to cost. With the money that it is costing OHIP today, and all of us as taxpayers, if it can be done better and cheaper a different way, then it is time that maybe they looked into it.

The other thing is just something that I was not aware of. When did the chiropractors get the doctor degree granted to them where they can call themselves doctors? I was under the impression that had to be through a degree-granting institution rather than a self-disciplined group kind of thing. Has that changed and I missed it?

Mr. Chapman-Smith: The use of the term "doctor" is really quite interesting. This, again, I have seen in many different jurisdictions. It is really governed, in the health professions, very much more by a matter of professional etiquette underlying certain legal considerations. You cannot do anything that is illegal, but above that, it is a matter of standards in the community. I think in Ontario for a long time it has now been a recognized standard for optometrists, psychologists, chiropractors and everyone to use the title subject to identifying their discipline.

R-1715 follows



(Mr. Chapman-Smith)

~~the recognized standard for optometrists, psychologists, chiropractors and everyone to use the title subject to identifying their discipline~~

The matter, I think, was last looked at by the lawyers acting for the board of directors of ??chiropractic, which is the college regulating chiropractic, two years ago, and his opinion on the current legislation was that it was authorized.

Quite apart from the legal position, it is interesting to note that most of the correspondence between medical associations and ministers of Health and the chiropractic leaders today is all quite relaxed including the title "doctor."

Mr. Chairman: Does the same apply to dentists?

Mr. Chapman-Smith: Yes. If you call a dentist, ??you say doctor—

Mr. Wildman: Why I asked that is because there was one in my area who put "doctor" on his licence plate and, right away, the medical profession got after him and he had to remove it right away.

I checked into it at that time. The way I understood it was that when you are kind of a self-disciplined body—like you set your own exams and everything, rather than in the university where they are set by the university, with a degree-granted from the university—that you could not call yourself doctor.

I wondered if you are connected now with a particular university that would give you that right to call yourselves doctors.

Mr. Chapman-Smith: As I say, the legal opinion is that the right is there, and it happens in practice.

On the issue you now raise about connection with a university, that is one of the things that the profession has been talking to the Ministry of Health about. That has not been resolved yet.

Mr. McGuigan: I might help out a bit. Before I talked to the chiropractors last weekend, I got a status report from the Minister of Health, and that question was one of the items. According to the report, that is really not under question, and there is no opposition from the medical profession. That was just the simple answer they had.

Mr. Chapman-Smith: I have a letter from the College of Physicians and Surgeons of Ontario in 1978, 10 years ago, saying the use of the title "doctor" by a chiropractor is quite all right, as long as it is indicated it is of chiropractic. That maybe the tale behind the licence plate which just said "doctor."

Mr. Wiseman: I know it amounts to ??

Mr. Brown: The statistics seem rather overwhelming. There seems to be a great number of advocate groups within this system. Being a new member, and a new member of this committee, I am totally amazed at the complexity of

Mr. Brown

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the whole workers' compensation issue and the number of players in it. What interests me a little bit is that we have a lot of advocate groups within the system such as the office of the worker advisor and the office of the employer advisor, both of which have at least some degree of a policy-making role.

I am just wondering if your group has been in conversation with groups such as these about these issues. Obviously, in terms of helping workers, I would think the worker advisor would be very interested in this issue and, obviously, in terms of the cost, the employer advisor, for example, would be very interested in these. Have you had conversations with those kinds of groups about this issue? There are more than those two.

Mr. Chapman-Smith: During the last five years, the association has, in what I would describe as a very professional way, tried to deal with the leadership of the Workers' Compensation Board without excessive pressure or politicking. The association has tried to introduce the facts, the research, and tried to encourage them into what are sensible initiatives.

It really has been felt all along, until very recently, that there was likely to be success on that more dignified route. The times may well be changing.

Mr. Brown: I was not suggesting that you contact them, but rather, that they might be contacting you with these issues.

Mr. Chapman-Smith: There is a lot of contact that way. The case I have just given to you and referred to that I appeared on was one of a worker coming to the association through his representative and saying: "Is there any way you can help?" The association said: "Yes, there is. Let's fight this."

So there is a continuing communication like that, but I cannot honestly—

R-1720 follows



(Mr. Chapman-Smith)

~~was one of the workers coming to the association through his representative saying, "Is there any way you can help?" and the association said, "Yes, there is let us fight this."~~ ~~so that there is no convincing communication like that that I cannot honestly say, looking over the last two or three years, there have been formal discussions in this area.~~

1720

Dr. Koch: Chiropractors work with workers' advisers often in helping a worker with an appeal.

Mr. Brown: That is kind of one of the things that amazes me, that we did have them here before and was not, I do not believe, raised at that particular time and it would seem to me, I guess I am not trying to fault anyone for it, but it would seem that that is a policy initiative that a lot of groups should be looking at, rather than just the board.

The other question I had really relates to: the best way to treat people, is not to have to treat them, and that is to prevent the accidents in the first place, whether there is conversation with, say, any of the health and safety associations we have in this province, has your group been active with them at all? On this committee particularly we are familiar with MAPO, which is the Mining Accident Prevention Association. They also, I would think, would have a very strong interest in issues that would first prevent accidents, and especially strains and that sort of thing—are those kinds of conversations going on?

Dr. Koch: I believe they are. I am aware of conversation we have had with the IATA and I believe we put together a movie.

Mr. Chapman-Smith: There was a film in conjunction with the IAPA back now I think in 1978, and there is a consistent dialogue and joint project there, and a specialty group of in chiropractic that has an interest here that runs seminars and has a certification program, and their graduate members do a lot of work in industry themselves. That is a growing area. Of course the profession overall remains relatively small. There are 1,500 in Ontario and a portion of those are active in industry, so it is much smaller compared with, say, industrial nurses or large groups like that.

Mr. Chairman: Before we go to Mr. Miller, I think you should know that, while you have been addressing the committee, that most dignified of all possible lobbyists, Dr. Lloyd Taylor, has been circulating at the back, picking up names and claim numbers.

Mrs. Marland: You will get equal time.

Mr. Miller: I think the letter that was presented to us from Miss Shelley Felix, the first paragraph in response to chiropractic treatment is under the authority of the Workers' Compensation Act, the board has the responsibility to monitor and control all treatment administered to injured workers. I think that probably you have to justify to them that the chiropractic treatment is going to be useful. You indicated that there was some progress, some changes made, no response from the workers' compensation permitting the chiropractic treatment?

Mr. Chapman-Smith: I think the burden of everything that is being

Dr. Chapman-Smith

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said this afternoon, there is no doubt about that, and heavens, we all want the board to have control, and there is no doubt about that principle. The burden of what we are saying this afternoon is that everything should be tried on an equal footing, and tested and used and assessed. We are saying that there is one conspicuous service that has been staffed out and it has not been tested, notwithstanding good evidence from elsewhere that it is very cost effective. Is that an adequate answer?

Mr. Miller: Yes, I suppose the recommendation of the committee last year—I guess anything in connection with governments works slowly and they do not change. You have to justify the changes. I guess there does seem to be some evidence that we are making some progress in the chiropractic treatment and care.

Mr. Chapman-Smith: Nothing is always black and I think one of the things you may hear from board representatives later in the week is that, while there is now a chiropractic radiologist reading all the x-rays submitted by chiropractors, that of course is pleasant for that to have arrived at last. There now is a chiropractic consultant on the board reviewing some of the cases, and that is pleasant and has been in place for about five years, but that is not anything such as using the services for the workers who need them. The OCA would say that those were useful advances . . .



1725
follows

(Mr. Chapman-Smith)

~~such as using the services for the workers who need them. The WCB would say these were useful advances,~~ run the risk of being viewed as cosmetic, unless are being substantiated by treatment within the system.

Mr. Miller: Again, the number of injuries and the percentage of increase has been a concern for a long time to determine when it requires treatment, when that injury took place, whether it was on the job or off the job or off work. There have been changes, again, made here through the Ombudsman, for one example, giving the benefit of the doubt to the injured worker. That is something that we have to deal with at this committee level, to make it more simple, to make sure the injury is taken care of and the worker is taken care of, without the hassle, because I think we are wasting more money on hassling than we are in trying to achieve the end result, the injured worker back to work.

I guess maybe it is an observation but the percentage of increases is an interesting figure and the percentage of the cost to the injuries, 30 per cent attributed to back injury, is one of the big factors that has to be dealt with.

Mr. Chairman: I think that exhausts the list of speakers. I would like to thank you, Mr. Chapman-Smith, and Dr. Koch, for coming before the committee and for bringing Lloyd Taylor with you.

I did want to add that next Wednesday in this room, which is the last day of this series of hearings we have having on the WCB, the Workers' Compensation Board will be here. We would be most pleased if you could be in attendance that day, not to cross-examine them, that is not the nature of our hearings, but to be in attendance in case there is a question that comes up. We would be very happy if you could be in attendance next Wednesday in this room.

Mr. Chapman-Smith: Thank you, and thank you for this opportunity.

Mr. Chairman: Tomorrow we meet in room 1, which is just down the hall and to the right, for those injured workers who might not know the layout of the building, at the same time, 3:30, when the Ontario Federation of Labour will be appearing before the committee.

The committee adjourned at 5:27 p.m.

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(Printed as R-14)

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

ANNUAL REPORT, WORKERS' COMPENSATION BOARD, 1986

THURSDAY, JUNE 9, 1988

Draft Transcript

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

CHAIRMAN: Laughren, Floyd (Nickel Belt NDP)

VICE-CHAIRMAN: Wildman, Bud (Algoma NDP)

Brown, Michael A. (Algoma-Manitoulin L)

Collins, Shirley (Wentworth East L)

Grier, Ruth A. (Etobicoke-Lakeshore NDP)

Leone, Laureano (Downsview L)

Marland, Margaret (Mississauga South PC)

McGuigan, James F. (Essex-Kent L)

Miclash, Frank (Kenora L)

Miller, Gordon I. (Norfolk L)

Wiseman, Douglas J. (Lanark-Renfrew PC)

Substitution:

Villeneuve, Noble (Stormont, Dundas and Glengarry PC) for Mrs. Marland

Clerk: Decker, Todd

Staff:

Madisso, Merike, Research Officer, Legislative Research Service

Witnesses:

From the Ontario Federation of Labour:

Wilson, Gordon F., President

From the Canadian Auto Workers:

Crocker, Jim, Chairperson, CAW Council's Workers' Compensation Board Committee

From the United Food and Commercial Workers International Union:

Shartal, Sarah, Research: Benefit Officer, Local 175/633

From the Canadian Union of Public Employees:

White, Jack, National Representative

From the International Association of Bridge, Structural and Ornamental Iron Workers:

MacDonald, Herb, Adviser, Workers' Compensation

From United Steelworkers of America:

Carriere, Norm, International Representative, Health and Safety Co-ordinator

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Thursday, June 9, 1988

The committee met at at 4:02 p.m. in committee room 1.

1986 ANNUAL REPORT OF THE WORKERS' COMPENSATION BOARD
(continued)

Mr. Chairman: The standing committee on resources development will come to order. We apologize for the delay, but the question period just ended and we are not allowed until it ends under the standing orders, so that is why there has been the delay.

We have before us today the Ontario Federation of Labour and its president, Gordon Wilson, is going to, I hope, kick off the presentation on behalf of the OFL. Gord, welcome to the committee. We are pleased that you are here.

Mr. Wilson: Thank you, Mr. Chairman. In order to facilitate today's proceedings, because this is an important subject matter, our delegation is larger than one would normally have before this committee, or any other of the Legislature, might I suggest that I begin with some opening remarks that are included in a text, copies, I think, of which are with members of the committee. Then we have with us a number of representatives from various affiliated unions of the federation in the province, who would also like to add and to supplement the presentation that I am going to make. I would then suggest, if it is all right with you and the committee, that perhaps we can engage in some dialogue at that point.

Let me begin from our prepared statement. The Ontario Federation of Labour welcomes the opportunity to appear before this standing committee on resources development to discuss labour concerns regarding the present workers' compensation system in Ontario. Joining us are representatives from a number of our affiliated unions, including the Canadian Autoworkers Union, the United Steelworkers, United Food and Commercial Workers, the Ironworkers and the Canadian Union of Public Employees. They will be discussing particular issues affecting their membership. The labour movement has been, and will continue to be, involved in every aspect of the public discussion on the subject of workers' compensation.

It is not necessary to discuss at any length the historical development of the workers' compensation system in Ontario. It is, however, useful to remember why the system was set up—to deal with the injury of workers with "justice and humanity speedily rendered," to quote WCB's motto. It should also be remembered that many of those . . .

1605-1 follows



(Mr. Wilson)

to quote the WCB's motto. It should also be remembered that many of those voicing concern today over such issues as WCB costs, are from the same groups who fought the creation of the system over 70 years ago. Any discussion of workers' compensation must be viewed against the backdrop of injury levels and the perception of the Workers' Compensation Board by injured workers.

In examining the following figures, it should be remembered that each one represents a fellow human being. I do not propose to read them into the record, other than to say, obviously, as you view them, that they are startling, with deaths averaging approximately 250 per year over the period 1983 to 1987. To this should be added the figures for occupational disease. The Yassi report on occupational disease and workers' compensation in Ontario, estimated that as many as 6,000 workers may die each year from diseases contracted on the job. In April 1988, after members from all three parties spoke in favour, the Legislative Assembly of Ontario adopted a motion unanimously, calling on the government of Ontario to declare, "the 28th day of April in each year as a day of mourning and recognition for the victims of work-related injury and disease, to be observed by a minute's silence and the lowering of flags at half-mast." These facts are a grim reminder of the need for improvements in the health and safety condition of workplaces in Ontario. After their injury, workers turn to the Workers' Compensation Board.

As you are no doubt aware, workers in this province view the WCB in a negative light. For many it has become the spiritual heir of the medieval practice of trial by ordeal. The WCB is seen as an adversary of the injured worker, an adversary which has power to force injured workers to constantly prove their worth before any benefit is given or continued. In recent months, injured workers have felt themselves under sustained attack by the reforms in policy and procedure at the WCB and by a vocal employers lobby. The opening paragraph of the WCB's 1987 year-end review and 1988 agenda states, "1987 was a year of massive change at the Workers' Compensation Board. In effect, a wholesale transformation of the way in which the board is structured and performs its functions began to take place. Much was accomplished and the remaining elements of the transformation should be completed by the end of 1988."

We have strong concerns regarding the WCB's motivation in bringing about this wholesale transformation. We believe that if implemented, this transformation will not be in the best interest of workers. There are several aspects of this process which we find disturbing. First, the WCB gives the impression that virtually everything, procedure and policy, must be re-examined and this must be done now. The rationale for such an approach is that corrective action is needed because, in the past, the WCB was doing many things in an inappropriate manner. Although input is sought from stakeholders, they are given severe time restraints and limited background to respond to important issues. Under such conditions, the stakeholders can do little more than state their concerns. With the input stage over, the WCB can then implement policy it had, quite frankly, already developed.

Second, an aspect of this process is being used to undermine established structures which were created by legislative action. Late in 1987 we received a copy of a detailed proposal for revisions to the Workers' Compensation Act, prepared by someone at the Workers' Compensation Board. The document examined the act section-by-section, giving the text, the issue, the departmental recommendations and the subcommittee discussion. The document, when brought to the attention of the government in the Legislative Assembly recently, was

Mr. Wilson

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dismissed as the idle doodlings of low level officials.

Among the changes were proposals to erode the power of the board of directors. The document had been prepared without their knowledge. The powers of the board of directors should not be eroded because it provides an opportunity for wider public input into WCB activities. The board could be strengthened by more worker representatives from injured workers and from organized labour.

Another proposed change was to erode the independence of the Workers' Compensation Appeals Tribunal. It appears that this is the goal of some elements in the WCB and from employer groups. WCAT was created by legislation to provide a court of appeal for WCB decisions, therefore, by definition, cannot be subordinate to WCB decisions. The existence of this independent tribunal has been beneficial, in the main, for workers. Our main concern, which we have expressed to WCAT directly, is the growth . . .

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~~therefore by definition cannot be subordinate to Workers' Compensation Board decisions. The existence of this independent tribunal has been beneficial in the main for workers. Our main concern which we have expressed to the Workers' Compensation Appeals Tribunal directly is the growth of legalism of its procedures.~~

1610

Increasingly, the WCB has expressed its desire to use its powers under 86n to re-examine WCAT decisions. The first use of 86n was in the ongoing decision-72 case. Not wanting to repeat the experience of open hearings, again the WCB has taken the position that subsequent 86n hearings will closed and will be by written submissions only. This is completely unacceptable. If the WCB believes that it needs to use 86n, then an open hearing must be part of the process. Parties who believe that the outcome of the decision will have an impact upon them should be given an opportunity to voice their concerns.

All of these actions taken together suggest that there are those at the WCB who would like to turn the clock back to pre-1985. Although the WCB reported to the provincial government, in reality it operated as it saw fit. In the course of your hearings you will hear from two groups of workers who have been directly impacted by the actions of the WCB and they are the injured workers group and the Canadian Union of Public Employees, Local 1750.

Workers who are injured become more than accident victims; they become victims of the system. They soon face a variety of new pressures, physical, financial, social and psychological. If assistance is sought from their union, local clinic or MPP constituency office, they encounter many others in the same dilemma. One organization, the Office of the Worker Advisor, has done excellent work across Ontario assisting injured workers. They now have a massive backlog and a budget freeze. Since the OWA is funded by the WCB via the Ministry of Labour, the WCB should ensure that sufficient resources are available to carry out this important task.

Injured workers have always had to deal with the frustrating experience of dealing with a bureaucracy the size of the WCB. Recently they have faced the additional problems of the "wholesale transformation" at the board. The ongoing changes in policy and procedure are seen as attacks on injured workers and what they thought were their rights. Injured workers are still waiting for action arising from the Ontario Task Force on the Vocational Rehabilitation Services of the Workers' Compensation Board. The WCB's vocational rehabilitation strategy raises many questions but little hope for injured workers.

The members of CUPE 1750 are faced with a difficult situation, as well. Through their training and personal experience they know what should be done with injured workers. They lack the power to implement what is needed. The reforms at the board are disruptive both to injured workers and to those working to provide needed services.

There is an obvious need for reform in our system of workers' compensation. We need a system truly based on the motto of the board. We in the labour movement believe that immediate action is needed in the following five areas: (1) that the present cutbacks be stopped; (2) that all permanently injured workers be awarded a just pension—injured workers suffer 24 hours a

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day, not eight and their pensions should reflect that reality; (3) that the WCB really recognize the scope of problems with industrial disease in this province; (4) that all injured workers be given full rehabilitation and reinstatement rights; and (5) that strong health and safety legislation be passed and that these laws be enforced in every workplace in Ontario.

We believe that our views are shared by groups active in compensation issues such as the injured workers, consultants and clinics.

We also share an opposition to the introduce of the wage-loss system in Ontario. We believe that it would not serve the best interests of injured workers in this province.

Through the rumour mill we are told the provincial government will probably be introducing amendments to the Workers' Compensation Act before the end of this session of the Legislative Assembly. This provides a unique opportunity for this government to capitalize on the extensive investigations of the ??Majesky-Minna report which received input from all areas and interest groups within Ontario. We would urge the government to quickly implement the Majesky-Minna report.

That concludes the presentation and the opening remarks by the federatin and I would now like to call upon Jim Crocker from the Canadian Auto Workers for his comments before this committee..

CANADIAN AUTO WORKERS UNION

Mr. Crocker: First of all, the Canadian Auto Workers come here today fully in support of the OFL brief and as has already been stated, we have taken a couple of areas of the brief and we would like to expand on them somewhat.

~~We in the CAW, along with the rest of the labour.~~

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(Mr. Crocker)

~~came here today fully in support of the OFI brief and as has been stated, we have taken a couple of areas of the brief and we would like to expand on them somewhat.~~

~~The first part that we want to deal with is decentralization or regionalization of the WCB.~~

We in the CAW, along with the rest of the labour community heralded the announcement that the WCB was going to decentralize and place the responsibility of adjudications and other important board functions in its regional offices where injured workers and their representatives could get direct access to their claims and participate in the actual adjudication process.

Unfortunately, in recent months the dream has fallen woefully short.

While we still support that concept, because it makes some very basic sense, we feel decentralization should be reviewed.

Funding appears to be falling short of expectations in all regional offices. The level of service has deteriorated over the years to the point where we are simply dealing with a mini-Toronto approach. Case loads are double or more than they should be in all departments: claims adjudication, vocational rehabilitation, medical aid, investigations and support services. Steno pools are worked to the maximum so it can take days to get a report or a letter typed. Even recommendations of allowance for injured workers take days to get typed on many occasions, thus delaying the final authorization for payment.

Staff is cut so fine that not only are case loads much greater than we were promised, which was 125 to 150, but vacation replacements are not available. When an employee takes a vacation, in some cases his or her case loads sits virtually untouched only to be faced by the worker when they return from their well earned vacations.

Phone systems are taxed to the limit. Very seldom does one get through immediately. When you call, usually you listen to the phone ring a dozen times or are immediately put on hold.

Board doctors are also taxed to the limit causing delays in the overall adjudication system. Files sit awaiting medical decisions as frustrated workers and their representatives wait for the decision.

Trained workers are moved to other locations long before adequate replacements are trained to take over the vacancy, causing even more delays and result in some very inadequate decisions.

All of the above has caused very poor morale among all personnel and strained the normally good relationship between board personnel and the worker's representative.

In spite of all these problems, decentralization is still an excellent idea that the labour community fully supports. Once the board sets up a regional office, and workers and their representatives are used to a certain level of service, these cutbacks are very hard to explain in the communities.

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The labour community would recommend that adequate funding be made available immediately to restore all regional offices and Toronto to a level of service workers deserve and expect.

When adjudication processes are delayed due to specific information beyond the board's control is one thing, but when delays are caused solely because the workloads are too high and facilities are taxed to the limit is completely inexcusable.

Board policy review: As with the WCB's regionalization policy, the CAW feels that the board's approach to policy review is an acceptable method of monitoring and developing overall board policies. Certainly if a review on any operational guidelines are to take place it is important that the labour communities have full access to that process and are granted equal authority to help shape these policies.

Having said that, we would like to request a few things from the operational and policy branch of the board.

We would hope that a more complete method of notification of the various labour bodies would take place. In the first year, many labour groups, the CAW included, were not informed of policy reviews that were taking place until it was too late for us to react. The board must realize that in most cases, it takes more time for us to react than other groups that the policy branch may be dealing with. We seldom deal with these types of concerns without contacting the memberships we represent requesting their input where possible.

I would hope that the board would be planning well in advance for any policy to be reviewed so that all parties would have adequate time to prepare these presentations and make the appropriate responses.

Again, we must emphasize if the operation policy branch wants to fully implement their external consultation program, please set the programs out with plenty of advance notice making sure the full labour community is advanced and given plenty of time to participate.

UNITED FOOD AND COMMERCIAL WORKERS UNION

Ms. Shartal: My name is Sarah Shartal. I am from the United Food and Commercial Workers. We represent a little over 70,000 workers in Ontario. Our members work in industry, retail and services, mostly within the food industry, be it food production or retail sales.

I would like to begin by saying that we wholeheartedly support the presentation of the OFL and the presentations of our brothers from the other unions. However, at the same time, we have some specific problems we would like to talk about, things that affect our members in our industries...

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(Ms. Shartal)

~~... wholeheartedly support the presentation of the Ontario Federation of Labour and the presentations of our brothers from the other unions. However, at the same time, we have some specific problems we would like to talk about, things that affect our members in our industries and in our retail sectors.~~

1620

Overall, the food industry does not have major problems when it comes to things like toxic chemicals or designated substances, but we have some problems with things like food additives, spice compounds, refrigeration and transportation. Most of our problems arise out of the work itself. Our most common problems are what is called muscular-skeletal problems that affect the arm, the wrist, the shoulder and the low back.

Seven out of every 10 claims that our people file are for something which is called repetitive strain injury. Most of these injuries are caused through the repetition of small motions over and over again, often at very fast speeds.

I will give you a couple of examples. In poultry processing in Ontario, birds hang upside down and pass in front of processors. In our plants, and we represent 85 per cent of the industry, they pass at a rate of between 20 and 37 birds a minute. If you are going to make a simple cut on a bird, that is two motions, that you put in and your pull down. If you are going to move your arm over to the next bird, that is three motions per bird. That means, if we are looking at a minimum of 51 to 111 motions a minute, 3,060 to 6,660 motions an hour, every hour that they work.

Our members in the plants are being crippled at unbelievable rates. Recently, in one of our plants in rural Ontario, we did a survey of the production line, and 94 per cent of our members on that line have carpal tunnel syndrome already, being the inflammation of the tendon inside the wrist, which then has to be operated on.

We have similar problems in retail. Everybody says: "Retail stores, foods, food stores, grocery stores, they are nice, they are neat, they are clean, they are not wet and they are not particularly cold. What problems could you have there?"

Take, for example, the cashier. Modern cash systems involve the lifting and twisting of large numbers of small objects on one wrist as you pull them through and in. Five years ago, Simon Fraser University, in a study it did, estimated that a cashier handled between 400 and 900 objects in an hour. These objects are lifted at least twice, once you pull them through the scanner and next as you put them in the bag. In a survey that I did about two years ago, in a medium-sized grocery store, based on a reasonable volume, over an eight-hour shift that comes to--

Interjection.

Ms. Shartal: Does this mean you all have to leave?

Mr. Chairman: We will see. It may be a quorum call, which we may be all right on, but we do not know yet.

Mr. Carriere: As long as it is not the fire alarm, you are okay.

Ms. Shartal: All right. I will just go on.

Mr. Carriere: You have the onion stink for ??fires.

Mr. Chairman: That is right. Just like the mines.

Ms. Shartal: In any case, back to retail food. In a moderate store, a small store like you all have in your neighbourhoods, not one of the super-huge stores, two years ago, based on the eight-hour day, just a survey of what goes through a cash register operator, you have between 3,500 and 10,600 pounds of goods go through a cash register on an eight-hour day. That means that every cashier in every unionized store in Ontario is lifting between one and a half and three cars a day on one wrist.

Our internationals, when they did a study out in California of retail food, they found that 97 per cent of all of the cashiers in retail food in California have carpal tunnel, and we estimate that between 40 and 70 per cent of all of our members will be operated on at least once within their work life.

These injuries become permanent injuries. I have represented workers who will never be able to pick up a dish again because the damage to their hands has been so intense. At the same time, we have problems with these claims when we get to the Workers' Compensation Board. Repetitive strain injuries can be called wear-and-tear claims. When you ??hit most claims, WCB wants an accident. It wants something to have happened to you that starts at a specific time. Theoretically under the act, under definition 3, there is a thing called a disablement. In principle, when it was first enacted in about 1965...

1625 follows



(Ms. Shartal)

~~... Theoretically under the act, under definition 3, there is a thing called~~
~~disablement. In principle when it was first enacted in about 1965, when the~~
term "disablement" was added to the act, it was supposed to deal with the
wear-and-tear claims. In practice, what the Workers' Compensation Board policy
says is it will allow a disablement claim only if something unusual has
happened, like if you move to a new job, there has been a speedup or there has
been a change in production. They will not allow claims that arise simply out
of the slow cumulation of wear and tear. As a result, they play sort of a
shell game. They put all the various categories and they bump the
wear-and-tear claims off the face of the earth. Needless to say, we appeal
them. We win most of them somewhere down the line in appeal, but the appeal
process takes between a year and two years. In the meantime, if it has been a
permanent injury, we are having to refer more and more working people to
welfare.

1620

Our problems do not end there. Let us say we have forced WCB to
recognize one of our wear-and-tear claims, but the injury that has been done
to the member's arm or back is serious enough to have produced some sort of
permanent damage. Let us say they never got rated for pension because their
doctors never sent in the letter that says, "I think there has been some
permanent damage." They have just gone back to work. Their doctors have told
them, "This is something you are going to have to live with." What do they do?
They do what most normal people do at that point. They work with pain. They
stop going to their doctors because their doctors cannot do anything for them
except give them painkillers, and they basically stop complaining to people.
Fine so far.

Two years down the line, it gets so bad that they have to lay off again,
and they apply to WCB for a recurrence under the original claim. Here comes
WCB's second catch-22. This catch-22 says: "For there to be a recognition of a
recurrence, you have to meet two tests. The first one is continuity of
treatment and the second is continuity of complaint. You have to have kept
going to your doctor and you have to have kept complaining to somebody;
otherwise, it cannot be a recurrence." It is like WCB thinks in two colours,
on and off. You are either totally sick and they are paying you benefits, or
if you went back to work, you must have been totally well. As a result, large
number of recurrence claims get denied. The tests that they have set out, in
fact, are almost unmeetable, and we are almost always in appeal on the issue
of recurrences, particularly when it comes to repetitive strain injuries. They
are not bad if you have a recurrence within six months, but what happens if it
is a permanent injury and you end up having a recurrence two years down the
line and you are not somebody who goes to the doctor every other week because
you have to live with it?

Let us say they did agree that there was permanent damage and you could
not go back to work. What happens now? Dealing with the same person with the
RSI injury. Let us say they even agree to retrain you. Here comes the third
catch-22 with WCB for our membership. As rehab is presently constituted, they
will only do what they call horizontal retraining, training to equivalent
jobs. With the nature of repetitive strain injuries, any job which is
equivalent to a packing house or cashier involves repetitive motion of the
wrists, ergo most long-term workers with repetitive strain injuries end up on

welfare.

Let us talk about pension for a moment. Let us say they actually recognize that you have something called chronic tendoniti, and it is a really bad case. You cannot put in a screwdriver without your whole arm swelling up and losing the use of your arms. That will rate you about a 20 per cent pension roughly. On top of the basic problems of the meat chart, it is our feeling that this approach to the wear-and-tear injuries of arms and shoulders are deeply gender biased. What they have done is said, "These are the muscle groups that most women's work entails," be they data processors, secretaries, processing workers, assembly workers, retail workers. The amount of money that is awarded for damage to those muscles is very small.

Let us say you even got a big pension—this is something I have really never understood—let us say they rated you at an 85 per cent pension rating. What I have never understood is what do they expect that extra 15 per cent to do? Do they expect the extra 15 per cent to go out and get a job? There is something about that whole concept that is—

Interruption.

Mr. Chairman: Let us let the United Food and Chemical Workers Union complete their presentation.

1630 follows



~~(M-100)~~

~~...for a long, long time.~~

1630

~~Mr. Chairman: Let us let the United Food and Chemical Workers Union complete their presentation.~~

Ms. Shartal: OK. Let us go back. Let us say you went back to work with a pension—next series of problems—what does this permanent pension do for you? Why is it important? Why do we oppose the issue of wage loss for those workers who have gone back to work? The first is—it is very basic—you suffer for eight hours—you suffer for 24 hours a day; you do not suffer for eight, but in addition there are two other reasons that have to be considered. The first is that the Workers' Compensation Board will not pay for what it calls maintenance. Anyone who has been through a claim, for example, will know they will pay for about six of chiropractic treatment. They will not pay after that and they will not pay for maintenance.

The permanent pensions that workers get to go back to work, in part, helps pay for things like the types of services and treatment that keep them working. Take away the permanent pension and you add on their responsibilities to try to keep themselves in the labour force, because there is no system under WCB that will cover maintenance of ongoing claims.

At the same time, at least under the present system, the permanent pension is the only way WCB ever recognizes that you are not 100 per cent well when you go back to work, and it is the only insurance you have got against recurrence claims. If you have a permanent pension on file, they can never tell you you were 100 per cent when you went back to work.

Before going on a little bit, I would also like to move for a moment to our employers. While we do have a number of employers who are probably really serious about health and safety, we have a number of others who really care only about how much it costs them. As a result, more and more of our employers are introducing what are commonly called the safety bingos or other forms of pressure to keep workers from filing for compensation.

The way the most common of them work is that they will give you at the end of the month \$20 for every department that does not file a single claim. They tell you this is a prize for good health and safety. It is not. What it really is is peer pressure to keep people from filing compensation claims.

At the same time, we should all remember that every time one of our employers manages to harass someone or push someone on to taking sick benefits as opposed to filing for compensation, the difference in cost is quite substantial for the employer. Under sick benefits, with any sick benefit plan that any workplace has, the employer pays for drugs and for lost time. They do not pay doctors' or hospital fees. Those are paid by the Ontario health insurance plan.

Under WCB, employers are charged for the full cost, at this point under the new experience rating, of a claim, which means they pay the full doctors' costs and the full hospital costs. That means that every time they manage to convince someone, be it through harassment, be it for telling them that WCB is

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going to take forever, which it does and they will give them their money in two weeks, be it whatever manner they manage to get somebody to claim sick benefits as opposed to WCB, they have managed to role a substantial cost of an injury they produced onto the backs of the taxpayers of the province of Ontario.

What happens if they get caught? Here is catch 22(4) at WCB. They get fined \$50. If I were an employer, at those odds, I would probably be doing my best; \$50 is not a big deal. I have claims in which I get employers fined two and three times a claim. There is absolutely no other mechanism of enforcement to get them to report injuries.

Last, I would just like to say a couple of words about the office of the worker adviser. We as a union would like to voice our support for the office of the worker adviser. Unfailingly, when we have had a difficult case, particularly disease claims—we do not have a lot of disease claims; we have not specialized in disease claims—the OWA has always come to our assistance.

I would like to point out that last year, according to some statistics we worked on, about 15 per cent of the labour force went on compensation. In our own case work, I am handling about 700 appeals at this point. We have gone up—our case load has about tripled in two years. I understand that at this point the OWA's waiting list is two years long. Injured workers have to wait at this point, when they apply to talk to the OWA, two years before they get somebody to talk to them.

The whole of the compensation system has become increasingly legal, increasingly bureaucratic and at the same time, the OWA went and had its budget frozen. They cannot hire another representative in the province. Something about that seems to be incredibly insensitive to the problems of injured workers.

~~11~~
R1640 follows

(Ms. Shartal)

~~...increasingly bureaucratic, and at the same time, the OWA went and had its budget frozen. They cannot hire another representative in the province. Something about that seems to be incredibly insensitive to the problems of injured workers.~~

In our industry, the problems come from work itself. They come from the way work is done and the way work is organized and we have no protection, either under the Occupational Health and Safety Act or under workers' compensation, because they are not covered. So what we are forced into under the present system—excuse the language—but is the process of guerrilla war with most of our employers. But what we try to do is push as many claims through to prove to them they have a problem so that they will go and do something about line speed, heights of things, weights of things and the way work is done.

It is our feeling that workers' compensation is supposed to be a system that provides workers' coverage with dignity. It is not supposed to be a charity system by which you ask for some sort of favour and if you are miserable enough, they give you something. If anything comes out of the changes in the Workers' Compensation Board, it has to be to allow workers' coverage with some sort of human dignity taking into account all the things they do at work and not simply the increasingly narrow definitions that board administrators are putting on entitlement. Thank you.

Mr. White: Mr. Chairperson and members of the committee, my name is Jack White. I am with the Canadian Union of Public Employees, and we represent approximately 130 workers across this province.

Interjection.

Mr. White: That is ??130,000. I am sorry.

I could speak to you today about the problems we face in our hospitals with workers lifting patients and injuring their backs. I could speak to you about our homes for the aged workers who lift patients and injure their backs. I could speak to you about our school board employees who work alone, injure themselves and have difficulty receiving workers' compensation.

Reference is made in the Ontario Federation of Labour brief at page 5 to section 86n. I would like to take this opportunity to speak to you today about 86n and the devastating effects that it has on workers because 86n allows the Workers' Compensation Board to deny claims.

I would like to speak to you about a hospital worker who suffered left shoulder and upper back injuries in two compensable accidents, the first one on January 18, 1983, and the second one on July 19, 1983. She received temporary total disability benefits from February 24 to May 11, 1983, as a result of her first injury and then was off again from July 20, 1983, to April 24, 1984.

She went back to work and was laid off again on July 20, 1984, and was off again until September 3, 1985.

She returned to work and worked until November 16, 1985, and because of

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increased pain, was laid off again and was denied further benefits.

An appeal of that decision was heard on September 5, 1986, before a hearings officer who denied this appeal maintaining that her problems were due to a noncompensable fall that she had suffered in a supermarket on August 18, 1983.

This decision was then appealed to the workers' compensation appeals tribunal on September 14, 1987. It is interesting that the panel in its decision said the following:

They said that on the basis of their conclusion: ??At least since April 8, 1985, the worker had been suffering a genuine total disability caused by pain that is real to her and which has resulted from the compensable injuries and that as of the date of the hearing, maximum medical rehabilitation had not been achieved.

??"This panel finds that the worker is entitled to temporary total disability benefits from November 17, 1985, to the date of this hearing."

It goes on to say, ??"The worker is also entitled to a continuance of such benefits beyond the hearing date until the date when the board determines that maximal medical rehabilitation has been achieved and the question of entitlement—

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(Mr. White)

~~It goes on to say that the worker is also entitled to a continuance of~~
~~benefits beyond the hearing, but until the date when the board determines that~~
~~maximum medical rehabilitation has been achieved and the payment of~~
~~benefits to permanent pension benefits under subsection 45(1) arises. They~~
go on to say, ?? "The panel would ask the board in the circumstances of this
case to take such steps as may be open to it to especially expedite the
calculation and payment of the benefits." Finally, they said, ?? "It is evident
that the worker and her husband, who are both entitled to workers'
compensation benefits, should receive medical and rehabilitation assistance.
We urge the board to institute a rehabilitation program for them without
delay."

1640

I think it is important that you hear of some background as it relates
to this couple. The husband has been on and off compensation since 1956 and is
today an invalid, unable to do any type of work at all and has been an invalid
since August of 1984. She, quite naturally, is affected by her husband's
condition and her inability to earn sufficient to keep their home and pay
their outstanding debts. In a report prepared by a WCB social worker on
November 18, 1986, she clearly stated that the worker has become suicidal
and/or homicidal and requires the care of a psychiatrist. This worker is
presently under the care of a psychiatrist, whom she sees every second week.

This worker won her claim before the Workers' Compensation Appeals
Tribunal and of course received that decision and undoubtedly was very pleased
and phoned me and thanked me for all the work that I had done, but then she
learned that the board under section 86n was going to review that decision. I
then wrote to the chairman of the board, outlined to him what a delay in
receiving moneys would do to this couple requesting that the claim be allowed
to stand for to do otherwise, in my opinion, would be inhumane, but to no
avail the review would go ahead according to Dr. Elgie.

As the worker's representative, I was given an opportunity to make a
written submission in support of the worker's right to benefits and, I might
add, with no knowledge as to how or by whom a decision would be made and how
quickly that decision would be made. I should also add without an opportunity
to give oral argument as to why this claim should be allowed.

It is my understanding that the issue that disturbs the board is the
question of retroactive payment beyond July 3, 1987, when at that time the
board introduced its own policy as it relates to chronic pain disorder. I
suggest to you that if that is the case, why then does the board not at least
pay benefits to those workers from July 1987 and then allow verbal argument as
to entitlement beyond that date?

Here is a lady who has not received a penny from any source since
November 1985. I attended a meeting at the Ontario Federation of Labour on
Monday last. I just got into the building and I got a message to phone my
office. I phoned the office and the receptionist said, "You had better phone
this woman because she is saying to me that unless she hears from you
immediately, she is not only going to commit suicide, but she is going to take
somebody with her, probably from the hospital that she used to work in."

It took me an hour to convince her that that was not the thing to do.

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What upset her was the fact that her landlord that morning had advised her that her rent was going to be increased by four per cent. I should also add, she has not paid her rent for many months and is about to be evicted. She has hydro bills of over \$400. They are threatening to cut off her light. She cannot pay her telephone bill and that is about to be cut off. Surely, the board could have paid her from July 3, 1987.

In the letter I received from the legal department that is handling this review, they advised me that without prejudice I could approach the board and ask that they do that exactly, pay from July 3, 1987, which I of course have done. Let me advise you that the response from the board is—

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(Mr. White)

Let me advise you that the response from the board is, "I am sorry. That claim is currently before the review committee and we cannot do anything until it comes back."

On top of that, another four or five claims dealing with chronic pain disorder have been added to the list. I suggest that it will probably be October or November before a decision is rendered. This is all because of section 86n. Section 86n allows the board of directors to stay any decision of WCAT where such decision turns upon an interpretation of the policy and general law of the act. I suggest to you that makes WCAT almost ineffective in most cases.

In closing, what I would like to do is quote for you from another decision of WCAT and that is decision No. 519. They say in that decision:

?? "In our view, our decisions to award temporary chronic pain benefits are decisions that are made in accordance with the act. They produce a result that at least for the pre-July 3, 1987, time period is inconsistent with the result that would be achieved by applying the board's chronic pain policy. We are confronted then with a situation in which the board has enacted a policy that produces a different result than would arise by the application of an established line of authority from previous tribunal decisions.

?? "It seems to this panel that the implementation of a new policy by the Workers' Compensation Board does not have the effect of changing an established line of tribunal authority. The board has certain powers under section 86n of the act to review tribunal decisions on matters of policy and general law. That is the mechanism that is available to the Workers' Compensation Board if it seeks to challenge a principle contained tribunal decisions. Hence, where there is evidence that a worker is disabled by a chronic pain condition and the evidence establishes that the worker's condition is temporary—that is, it has not reached the point of maximal medical rehabilitation—it is right for us to continue to award benefits for the ensuing pain disorder."

The worker I have described to you today has yet not, in our opinion, reached maximal medical rehabilitation. This worker is in dire need of money. The general ??counsel for the WCB in its submission to whatever the body is, the corporate board that is supposedly reviewing this particular claim, announced that the total amount of money that would be owing to this woman to date is \$24,400. Hardly a large amount of money, but just think what it would do to this couple.

Ladies and gentlemen, I thank you for this opportunity of addressing you today.

INTERNATIONAL ASSOCIATION OF BRIDGE,
STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL 721

Mr. MacDonald: I am Herb MacDonald from the International Association of Bridge, Structural and Ornamental Iron Workers in Toronto. Ironworkers Union in Toronto and I thank you for this opportunity to speak here today. We have many concerns and many of them have been addressed by the previous speakers.

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I would like to start out by saying that one of our main concern is the time that it takes to get appeals and the time that it takes to get decisions is absolutely ridiculous. It is somewhere in the area of 18 months to two years where we have had appeals and no decisions yet, or we have had appeals put in and no dates set for appeals.

I hate to use this terminology, but it has been used, I guess, for many years and it is the injustice of the meat chart. It just has to be changed, but our main concern in the iron worker trade is in regards to the rehabilitation system. It is completely inadequate. People in the rehab system are ill informed as to what their own client's status is.

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(Mr. MacDonald)

... regards to a rehabilitation system. It is completely inadequate. People in the rehab system are ill informed as to what their own client status is. For example, in every case we deal with, the rehab counsellors are not aware whether these people, these injured workers, are receiving benefits. If the injured worker is not receiving benefits, but receiving the assistance of rehabilitation, in most cases, seen on a monthly basis, the answer I and the injured worker receive is that it is not in the rehabilitation's jurisdiction, that this is the job of the pension department.

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My question is, where does this leave the injured worker? Questions are asked in such cases as: "Does your union have benefits that you can receive? Have you applied for unemployment insurance benefits? Have you applied for Canada pension benefits?"

I point out to you, and it has been told ??to me loud and clear, by Canada pension officials, that the Canada pension board is not in the position of subsidizing the compensation board. Furthermore, to get Canada pension benefits, you must be totally disabled. Therefore, it is a double standard by the board's rehabilitation system, where a worker is told he or she must look for X number of jobs per day or week and, at the same time, in order to get Canada pension benefits, he must be totally disabled.

In order to get benefits from unemployment insurance, you must be ready, willing and able to accept available work. Therefore, you are not entitled to rehabilitation benefits.

I would point out to the board that we, in the trade of ironworkers, are much better equipped and have documentation to prove that we can do a better and more efficient job of rehabilitating our people, motivating them back into the workplace at a decent and respectable work environment, therefore, we strongly recommend that funding be provided for these benefits.

We are demanding five issues here:

- (1) mandatory rehiring for injured workers;
- (2) no return to the wage loss system for compensation;
- (3) a more just pension for injured workers;
- (4) proper consideration given for industrial diseases;

And our most important issues, as ironworkers in the construction field, is rehabilitation. We are asking that

(5) Workers be rehabilitated by their own unions, and in our case, the ironworkers, we demand that the moneys be made available, as we suggested in the Majesky report, to purchase a building to retrain our own people properly, and/or other injured workers whom we can assist, in returning to respectful place of work.

I point out that the ironworkers is a unique trade. For example, we are

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a recognized trade that is involved in a variety of work that includes reinforcing rodmen, window and curtain wall installers, structural steel erectors, welders, precast erectors, tower erectors, instrument men, ornamental iron workers, machinery movers.

I strongly point out to you that with the variety of work that is involved, we in the ironworker trade have the perfect opportunity...

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(Mr. MacDonald)

~~I strongly point out to you that with the variety of work that is involved in the ironworker trade, there is the perfect opportunity and the mobility within our trade to return our people to gainful employment.~~

There again, there is one problem. Funding is needed. With the proper funding we are convinced that we can put injured workers back into the workplace at a faster rate than is happening with the present rehabilitation system where, for example, our people know their representative. With all due respect to rehabilitation counsellors, they only know their clients on a number basis and a visit to their home or to the board once per month.

In our opinion, this is not rehabilitation. In the case of the ironworker, we respectfully ask for funding provided by the Workers' Compensation Board and I can assure you that we will provide results that will benefit the injured worker and the compensation board, by getting the injured worker back to gainful employment.

We have a very good record in this respect and with the help of the board, this change in rehabilitation certainly will make relations between the board, injured workers and companies a much better working environment.

Lastly, I would like to point out that the companies who hire our members for installation of materials on construction sites also manufacture this material on their premises. Therefore, we have an excellent opportunity of putting our injured people back to work, not in the construction field, but in the shop jobs where there is a desperate shortage of qualified men and women to do the manufacturing work.

Thank you.

The Vice-Chairman: Thank you. Norm Carriere, from the United Steelworkers of America, someone well known to the committee.

UNITED STEELWORKERS OF AMERICA

Mr. Carriere: ??I am Norman Carriere, representing the United Steelworkers of America in Ontario. Our union represents about 80,000 workers in a large range of jurisdictions, from heavy industry and mining, the steel industry, fabricating, appliances, the chemical industry and some transportation. We have members who, obviously because of the nature of the work in heavy industry, ??have a lot of accidents, and unfortunately, too many fatalities. ??There are a lot of industrial disease problems with the chemical industries. Our union, because of the jurisdiction, has 17 regional offices spread out throughout the province, plus one district office which I work out of.

We have about 50 staff ??members. Part of their responsibility is to handle compensation claims for our members and they are kept fairly busy at doing that. But apart from that, we have, because of our large numbers of problems with the compensation claims and the way that the policies are handled, full-time local officers above those servicing representatives—we have the Sault Ste. Marie area—that have full-time people working continually

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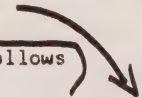
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on processing claims and appeals and assisting workers to get justice under the compensation.

Full-time reps in the Elliot Lake area do just that. In the Sudbury area we have a full-time compensation department, apart from our staff rep, who are completely every day occupied dealing with cases. We have a full-time work and compensation committee in Hamilton that have more than one, apart from our staff, because of the kind of problems that we have in the compensation.

So we certainly endorse the statement of the Ontario Federation of Labour that was presented to you this afternoon. We also have the same problems that were raised by all of the previous speakers, that apply equally to our ...

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(Mr. Carriere)

~~the statement of the Ontario Federation of Labour that was presented to you this afternoon.~~

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~~We also have the same problems which were raised by all of the previous speakers. They apply equally to our organizations and the members we represent. For example, when Jim from the autoworkers talked about the decentralization problems that they have which causes delays, we have the same problem in the Sault Ste. Marie, Sudbury and Hamilton areas.~~

Policy notices is exactly the same. We have a terrible time. We have the same problem in trying to respond and to try to make a presentation in policy changes without proper prior notice because it is difficult for us to co-ordinate throughout our provinces, to meet and try to assist and get input from all of the people that we have to talk to in order to respond.

The problems with reoccurrence that Sarah raised with you regarding what happens to those members that we have—and we have hundreds of them—on reoccurrence, we have exactly the same problem.

Problems with time delays for appeals to be heard and decisions made, which was raised by the ironworkers, is exactly the same for us.

So there are problems, and our union has the same problems, I suppose, because of the jurisdictions and the numbers. We certainly support all of the statements that were made earlier.

I want to talk a bit about one area of some concern to us which is regarding the industrial or occupational disease and the kind of injustices that are raised because of the board's policy when dealing with these matters.

I want to raise this because we have had experience for a long time with occupational diseases, especially in the area of lung cancer cases that result from exposure. Some examples are: the lung cancer cases of exposure to nickel in the ??cindery plant at the Inco plants; the lung cancer problems that we had with the exposure to radiation in our uranium mines; the coke oven exposures over which we have had months and years of battles with the Workers' Compensation Board; the asbestos exposure that was the same; and, just lately, the lung cancer cases from exposure to our gold mines.

We submit that in every one of those areas, where we have had to represent workers, claims were denied for years. They were denied even after there was some clear, known evidence that the workers had been exposed to some form of carcinogen. In every case, after getting some facts, which I think under the act ought to be sufficient, we had to continue to watch our members die of cancer and we had to pile bodies.

We were always placed in a position of defending our members to prove that the exposure, or at least the death, to try to prove that it was not shown that it was from any other reason but from exposure.

I think that it is a complete reverse of what the act says in section 3, I think, where it says that you are deemed to have had an accident unless the

contrary is shown. Where we showed that there are facts, that there is evidence that the exposure was work related, that is not sufficient in occupational disease. You have to show that the contrary is not shown, which is a complete reverse of what the act says. That is the way that the board has been applying, in all of these cases.

We submit the result of the unjust policy has been years of denial of workers' compensation benefits to workers and families who were really entitled to these benefits. Really, what has resulted is a shifting of the cost from the employers, through their compensation premium, which are really the ones that are responsible—you have an industrial disease and it is supposed to be covered—over to the taxpayers and to government programs such as welfare. In fact, that whole responsibility ought to have been on the companies where those workers were exposed.

In the gold mine situation, which is a very recent example to support at least what we are saying, our union had evidence of increased lung cancer cases for at least 15 years, cases which we have been raising with the compensation board and fighting claims on.

~~As a result of at least some sufficient evidence that there was a study~~

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(Mr. Carriere)

~~the compensation board for at least 15 years, cases which we have raising with the compensation board and fighting, in 1983.~~

As a result of at least some sufficient evidence, there was a study made by a Dr. Muller, and I am sure you are all aware of it. It was really a study that indicated support for what we were saying, that we were not just screaming for nothing. It was in early 1983 that Dr. Muller released his first study of the gold mines. His study in 1983 supported our union claims—I am sure you can get the study—and found that most likely the entire increase in both the underground gold miner and the underground mixed-ore miner is due to gold mine experience.

Mr. Wildman: Dr. Muller, from the ministry.

Mr. Carriere: Dr. Muller's report, which is from the ministry.

Now this is 1983. If you read the act, you would think that that would suffice, the fact that the workers now have had a causal relation and that there was an increase, where the study shows that that was the case.

It would be our submission that this was sufficient to give the benefit of the doubt, under subsection 3(3) of the act, that it should have qualified miners, who suffered or died of lung cancer, for workers' compensation benefits. We submitted it should be sufficient, unless the contrary was shown—not that it should go on so that we have to continue to pile bodies.

Yet the claims continued to be denied until a further study was made which was released in July 1986, again by the same Dr. Muller. Again, all the study did was confirm the first study and supported more conclusively what was already known. Again, the Workers' Compensation Board continued to deny claims.

Now you have two studies, both studies commissioned by the compensation board as one party. I think the Atomic Energy Control Board was the other, and I think the Labour Relations Board Ontario. It does not matter. Compensation was part of it. You have two studies. Yet claims are still denied.

What happens then is that the compensation board commissioned its own independent study of gold miners. They also then pawned this whole issue onto the Industrial Standards Disease Panel. The panel, with two Muller studies, one of them clearly concluding that the lung cancer in miners was caused by gold mine experience, also elected to commission their own independent study.

So now we are going on. We now have from 1983 sufficient evidence, in our submission, to give the benefit of the doubt. Unless, we submit, it should have been proven to the contrary, this ought to have qualified people. We go on.

All of those studies, of course, supported what had been found in 1983. It was only in 1988, five years later, after that first study was released confirming our position, that the workers' compensation finally accepted and started to pay some of these claims.

When that happened this year, the claims were paid only to surviving spouses in 1988. There was no retroactivity, back to at least 1983 when it was

found.

Just to show you what kind of saving that is, we submit that in 1983 where people qualified, and a lot of these cases are miners who were exposed in the very early years, in the 1920s and 1930s— Of course, a number of widows have died from 1983 until 1986, when they qualified. That is all savings. Nobody gets qualified. The board does not go back and compensate the estates of families for that. It does nothing. It now only compensates the surviving spouses. That is the kind of policy that is happening that we say is a problem.

The other example is in that same criteria, and it is applicable to all industrial disease. If you go back to those studies, and I would urge the committee to do that, to get the two Muller studies of 1983 and 1986, in both of those studies it was found that the gold miners were dying of an increased rate of stomach cancer. Clearly, there is a problem with stomach cancer in the gold miners. Since

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... they found that the gold miners were dying of an increased rate of stomach cancer. ~~Stomach cancer was a problem with stomach cancer in the gold mine~~ That has since been supported by the uranium mine study which said in uranium mines a large number of uranium miners— The uranium mines started in the 1950s and a lot of the gold miners went from the gold fields to the uranium fields. The uranium study also concluded that all of those miners that had gold mining experience in uranium mines were all dying of stomach cancer at a much increased rate.

1710

You would think that that would suffice to qualify those people under the act. Clear evidence from these studies that there is a relationship. It is our submission, at least on the face of it, that unless it is proven otherwise, the benefit of the doubt ought to go to those miners and families, which is what the act and industrial disease that is not the case. Yet to date none of those people who have died or suffered from stomach cancer in uranium mines get compensation.

So we submit that when one reads the act and the section that deals with industrial disease, section 122, and you tie that in with, of course, the definition of accident, when you tie that and apply that to section 3 you would think that the stomach cancer in gold miners is, in fact, an occupational disease and should be awarded.

Unfortunately, we know that we will have to continue to pile the bodies and stomach cancer and families will continue to suffer. Again, companies will be getting away, because of the policy, with having to pay the cost. All that will be pawned off to the government and the taxpayers.

The miners' experience is only, we submit, the tip of the iceberg. When it comes to the occupational diseases, the reason why we can, I guess, get something out of this and the miners because mines are large locals and large bodies. We can get through some system and some studies, as we did in uranium and in nickel and coke ovens, some evidence and some proof about this. Small industries where workers are exposed to all sorts of hazardous agents, where you cannot pile 100 bodies, small industry where you work with 15 or 20 people you get the same problem. If you have one or two that die every two years, maybe, of a certain disease, if you tie it to the average it is probably well above even what the miners experience but it is more difficult.

It is impossible in that kind of situation for those workers to get justice under this system. We think that when we tie the lung cancers and the stomach cancers, when you tie that, we are talking now about mortalities. Compensation is supposed to pay and not only after you are dead or if you are going to have a fatal disease.

Occupational disease is a number of other ones. You read—I think, in the federation report it talks about the study on occupational disease—that an estimated 6,000 workers will die. We submit that whether you are taking that is high or low, there is obviously a great number of people who die of industrial disease that are not compensated.

That is small compared to the thousands and thousands of workers that do

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not die, that are out there, that are disabled because of occupational disease and have absolutely nowhere to go. Their only recourse, the way the policy applies, is of course to rely on negotiated sickness and accident benefits that their union may get for them, ??and whatever possible applicable government system, social welfare and that kind of thing. All that is because of the compensation policy on industrial disease.

We think something has to be done. The same thing should apply to industrial disease as applies to accidents and that, whenever there is any evidence that the disease could have been caused by the workplace, that workers have to be given the benefit of the doubt until employers or government can prove otherwise and not the reverse.

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Follows

(Mr. Carriere)

~~... by the workplace, that workers have to be given the benefit of the doubt at that time until employers or government can prove otherwise and not the reverse.~~

That is my submission on the board's occupational disease.

Mr. Wilson: I think with the submissions that have been made by the members of this delegation, this committee surely now has a grasp of the scope of the difficulty and the suffering that many citizens in this province are subjected to as a result of treatment before the compensation board and the legislation and regulation of the board as it is presently constructed.

I would just like to end our presentation with one note that clearly, again, the assumption can be made both relative and true that inextricably, the question of the condition or lack of safety and health conditions in the workplace are linked to the numbers and the difficulties of workers' compensation.

If you look at the numbers submitted in our brief and what we have placed before other committees of this Legislature, the problem is not abating. In fact, the opposite is true. It is continuing to extrapolate.

I guess the question before this committee in terms of your input in the Legislature and other members of all parties in the Legislature, is whether or not the question before you turns on a criteria that is simply one of economics. That is to follow the position advanced by some that the way one contains costs in the Workers' Compensation Board is to restrict the benefits to workers who are out there in desperate need, as you have heard today, of those benefits.

Or secondarily, whether this committee is prepared to act in the Legislature, again, in concert with other members of all parties, to bring about some controls that are going to let the Workers' Compensation Act and the board that administers that act, act in the interest of the working people of this province.

I really have some concerns in terms of what this board is doing as a matter of public policy and the response, or lack of it, I have seen to date from this Legislature in terms of dealing with that question. It is a fool's folly I believe to think that the workers you have heard about today and countless thousands of others you have not heard about today, are simply about to evaporate or disappear out there on the horizon, nor are we to walk away from our responsibility to those workers, whether they be workers who are members of our organization or whether they be workers generally who have been affected by the conditions that have been articulated to you today.

I would appeal to this committee to do whatever it is within its realm of influence, that if and when our assumption is correct, that legislation is introduced into this House this month or perhaps in the fall, that it would join with us in doing whatever it can, particularly members of the governing party do whatever you can to make sure that the compensation act and the board and the whole administrative process is: First, more accountable to the people of this province through the Legislature; and second, that the act goes back to its original design and purpose. That is, to serve the working people of

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this province. Because if we cannot achieve that, then we are in for some difficulties in the months ahead in this province.

Any of the members of this delegation would be more than happy to respond to any questions that you may have.

Mr. Chairman: Thank you. There has been an indication of a question or two. Just so you know, this committee is reviewing the annual report to the WCB. This is not a fullblown investigation of workers' compensation in Ontario at this point. It is a look at the annual report that the standing orders requires or suggests we do every year.

Complicating that is the possibility of a new bill that, if it gets second reading—we are told it will probably get first reading in the next week or so, but that is just an introduction basically. If it gets second reading before we adjourn, then it could be sent out to this committee for public hearings and so forth. At that point, of course, everybody that we know of would be notified and asked to make a presentation to the committee on that bill itself.

That is where we are at now with the whole process. At this point, it is in a state of flux and we do not know whether or not we are going to be charged with that responsibility in the next couple of months or not. That is where we are at.

Mr. Wildman: I would like to ask a couple of questions related to 86n, particularly the Workers' Compensation Appeals Tribunal. That has been raised during our hearings a number of times...

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(Mr. Wildman)

... to 86n, particularly the Workers' Compensation Appeals Tribunal that has been raised during our hearings a number of times. When Mr. Sorbara, the Minister of Labour, and Dr. Elgie, the chairman of the board, appeared before our committee, I asked Mr. Sorbara directly if he believed that WCAT could make independent decisions even though those decisions they know are subject to review because of the interpretation the board has put on 86n. Mr. Sorbara's answer was a straight yes. He believed that the independence of WCAT was not compromised by the application of 86n. I would appreciate it if you might comment on what your view is.

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Mr. Wilson: Oh, yes. I will ask Mr. White to comment, but just as an initial reaction, I just think the difficulty we have there is essentially what we tried to lay out in our brief and that is that when one party is passing judgement upon another party's actions, it is very difficult to have that second judgement or appeal process subordinate to the original decision.

The natural instincts I think are for the first moving party, in this case, the board, to want to protect its position and if it has no legislative ability to enforce that, then it certainly would do that.

Jack, perhaps you might want to comment on that.

Mr. White: Mr. Chairman and members of the committee, the Workers' Compensation Board has announced publicly that it intends to review 12 WCAT decisions yearly. That should tell you something. But already that figure is beyond 12, and when we questioned the board and said, "But hold on. At one time, you said you were only going to review 12." "Well," they said, "but all the chronic pain cases that we're reviewing it is only one." So, we can look forward to the board looking at a whole number of WCAT decisions. As I say, that certainly tells you that WCAT is not the independent body we had hoped it would be.

Ms. Shartal: I would like to say two other things if—

Mr. Wilson: Well, you have to come up to a mike. If you just sit here, you can reach a mike, or over there.

Mr. Smith is not here. You can take his place.

Ms. Shartal: On 86n, there are two other points.

The first on 86n is that after decision 72, they have chosen to 86n in private. One of the things that is really appalling for us in the workers' compensation system is that they have decided they are not going to hear from anybody on any of the 86ns. They are just going to decide it behind this—they do not even tell you who is going to hear your case. The powers that be—somebody once described the WCB as pyramidal: on the top they talk directly to God and who are you to contradict them if they are talking directly to God?

The administrators are not talking directly to God and they will not tell you who is going to hear your case. They will not let you make a

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submission. If you have a WCB case, you make your submission. If you have a Unemployment Insurance Commission, you make a submission. If you have an arbitration, you make a submission; you go and you argue something. Somebody has to listen to you.

On all these 86ns, it is the only system we have in the province of Ontario that does not allow someone whose rights or benefits are being questioned, to have a hearing. You can have a hearing for immigration, you can have a hearing for UIC, you can have a hearing for certain levels of WCB, you can have a hearing for wrongful dismissal, you can have a hearing for a grievance. You cannot have a hearing under 86n because they have decided, in their direct line, that they do not have to give you one. That is completely unacceptable.

In addition, they have stayed the benefits of all the people who are presently under the system. I do not know of any other system that works like that. When you think about it, for immigration, we do not throw people out and then give them a hearing. We let them stay, give them a hearing and then decide what we are going to do to them.

The equivalent on WCB is they are throwing everybody out and they are saying, "Well, afterwards you can write a letter and tell us why we really should give you what somebody else said you should have in the beginning."

Mr. Wildman: There is also no deadline, you have no idea how long it is going to take. While you are waiting for a decision—

Ms. Shartel: It takes them two weeks to type a letter right now within the WCB. I have been told by adjudicators the last couple of weeks, it takes them one week to 10 working days to move one piece of mail from the downstairs mail room at 2 Bloor Street to the integrated service unit file, let alone how long it is going to take them to do this stuff. And they are never going to tell you who did it, and you have no recourse after that. So, you send it to ~~the 22nd floor~~

~~Mr. Wildman: So, the workers remain in limbo.~~

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(Ms. Shartal)

~~... to Bloor Street, to the integrated service unit file, but alone how long it is going to take them to do this stuff, and they are never going to tell you who is responsible, and no recourse after that. So you send it to the Office of the Ombudsman.~~

Mr. Wildman: So the workers remain in limbo waiting.

You have indicated that from your point of view, the workers compensation appeals tribunal is not as independent as the labour movement and the workers had hoped it would be. This may be a question you cannot answer, but I will try it anyway.

Do you have any evidence or any indication that the Workers' Compensation Appeals Tribunal decisions may have been influenced by the fact that they know that unless the decision is acceptable to the board, it will be reviewed under 86n?

Mr. Wilson: I do not believe we have any evidence to that effect, but I would suggest to you that that may possibly be the end result were things to continue as they are now. Surely if you are sitting on WCATs, and you make a decision contrary to the first one made by the board, you have to question why you are bothering to make the second one.

Mr. Chairman: Bang on, Mr. Wilson. When Mr. Ellis was here before the committee, the chairman of the appeals tribunal, he indicated quite unequivocally that he was satisfied that the present arrangement was working and that he did not see an alternative to having the right of the WCB to review WCAT decisions. I do not think I am stating that incorrectly. He was quite clear about his opinion and he chairs the WCAT.

Mr. Wilson: There are two difficulties with that. I am not questioning Mr. Ellis's response, but in my mind, it would seem, at least, first, Mr. Ellis sits as a member of the corporate board, as I understand it, at least he is in the 86ns.

Mr. Chairman: I think he is ex officio, not a voting member, but he is on the board.

Mr. Wilson: Certainly, one would think an influential voice on that corporate board. I really do have a great deal of concern with saying that the whole thing seemingly works well.

If it is a matter of general policy or law, first, one of our difficulties here is that it would appear the board in many instances makes policy without any public accountability. Second, if it is a question of law, then why would that process then not follow what is accepted as a standard in our society and that legal questions are generally settled in some public forum, usually a court.

That being the case, if Mr. Ellis feels unthreatened, he does not represent the views of most workers in this province. There is a great deal of concern. When WCAT was constructed, it was described by the government of the day as providing workers with an opportunity to appear before what in effect would be a lay court where they could talk about, not only the finer points of

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law, but also the impact upon them as individuals in our society and what effect that has on them and their wives, and we have indicated to you one of the difficulties I guess is, and I say this with great respect to all in the legal profession, but we really have developed again another make-work project for lawyers in that we have people dealing with WCAT issues now, and I am sure Brother ??Crocker, Jack and Sarah and all others here talk about that.

When you start trying to represent workers before a forum and the opposition or the counsel for WCAT is quoting case law from Arkansas, West Germany and Mississippi, I want to tell you, I do not think we are really equipped to deal with that. I would hardly call that a lay court. So we have those reservations about WCAT.

The principle of WCAT is sound. Let it remain a lay court, much as we have evolved in our industrial relations system with arbitration cases where the parties go on as simply as possible trying to determine whether or not equity and justice within the framework of the existing policy and principle has been achieved. If it has, then let the appeal stand. If it has not, then it is another matter.

It really is ludicrous, and I will finish on this point. It is almost, as Sarah has pointed out, that if WCAT is the highest court in the land, and we will say the Supreme Court in Canada and the Ontario court were to represent the Workers' Compensation Board, what parallel in legislation or law is there where the Workers' Compensation Board makes the decision and then the appeal court is subject to the lower court's review? It is a ludicrous situation.

Mr. McGuigan: I just want to make a comment while we are having this very enlightening discussion. I recall asking the chairman of WCAT—

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(Mr. McGuigan)

...while we are discussing a very enlightening discussion. I want to bring the chairman of the WCAT about the same process, and I think his answer was that each side's decisions influence the other decisions. The decisions of WCAT had caused the board to shift some of its positions and vice versa, which is only a natural, human thing to occur. The point I want to make is that it is not all one-sided.

1730

Mr. Wildman: I did not mean to say that. As a result of some of the decisions of WCAT, decisions being made by the board will have shifted and as a result there will be less need for those same kinds of appeals to go to WCAT.

Mr. Wilson: I tend to agree, Mr. McGuigan, there are cases where that is undoubtedly taking place.

Mr. Wildman: The other thing Mr. Ellis said, as I recall—I have to check the record—was that he was making his statements as personal statements, not necessarily as a representative of all the members of WCAT, because the chronic pain review was ongoing and WCAT would have to deal with whatever the result of that was when it happened and figured out what position they were going to take. So he was quite tentative in the way he made his statements.

I would like to ask about two other areas, one in rehabilitation and the other on occupational disease. In regard to medical or vocational rehabilitation, do you see any improvements at all in the rehabilitation programs of the board? We had Dr. Elgie and then representatives of the vocational rehabilitation division before us who pointed out that they had something like 6,000 cases referred to them last year, and they had dealt with 3,000 and some. I cannot remember the exact numbers.

Mr. MacDonald: I did bring up rehabilitation and it certainly is one of our very strong points with the iron workers union and the construction industry. I can tell you that in my experience with the rehabilitation system that I have not got one person, not one, in all the people I have dealt with over the past four years who has received a job that went through the system of rehabilitation at the Workers' Compensation Board, but I can well document as to the amount of people we have put back to work through our rehabilitation system. That is why I am saying that we are better qualified to rehabilitate our own people, because the people, with all due respect to the rehabilitation officers—they do not have any idea of what a construction worker is, and basically—the best thing they can offer is a job as a cleaner in an apartment building, and they send you to 183, and that is funded by the Compensation board, and they send you to 183 and then you take a six-months course and then it is good-bye.

Mr. Chairman: What is 183?

Mr. MacDonald: That is the labourers' union.

Mr. Chairman: Oh, I see. OK.

Mr. MacDonald: That is a fact. They just have not put one of our


people back to work: Not one.

Mr. White: If I could add to that, you will be hearing from the Canadian Union of Public Employees Local 1750 around the whole ??Downsview question.

It is our contention that Downsview has been used as an assessment centre as opposed to a rehabilitation centre and local 1750 will undoubtedly be urging that we attempt to change that system.

One of the things that we find within the Canadian Union of Public Employees, because we deal with schedule-2 employers primarily, is that if you are a school board employee, a custodian, for example, and you are injured, it is the rehabilitation counsellor who approaches the employer and says, "This worker needs rehabilitation, retraining," and that employer says, "Not me. Why should I put out money—

R1735 follows



(Mr. White)

...and you are injured, it is the rehabilitation counsellor who approaches the employers and says, "Well, this worker needs rehabilitation." The employer says, "No, not me. Why should I put out money when it is not coming out of the accident fund, it is coming out of my pocket," and so we have great difficulty in that regard. I have raised this on many occasion. The rehabilitation system just does not work in this province.

Mr. Chairman: We are hearing from local 1750 on Monday afternoon.

Mr. Crocker: Yes. One of the other areas that I think we have to look at when we are looking at vocational rehabilitation too is just the actual manpower situation. In all fairness to the vocational rehab workers, I do not disagree that it is limited what we have people do.

The people who represent the industry I work in, we have one person and supposedly that case load is over 100. If you take a look at approximately 20 working days in any given month how that person even makes a phone call to the person whom they are supposed to be rehabilitating in a month, just to make a phone call to them, let alone any kind of personalized consultation or sitting and making some arrangements where you can sit down with the injured worker and actually discuss lifestyles and what the future holds for him or her is a virtual impossibility.

In most cases, they have to drive out to the worker or arrange for the worker to come in to see them and spend a few minutes. There just is not enough time. I mean case loads are absolutely out of line, and certainly when you are dealing with over 100 people to get a decent phone call once a month is enough. That certainly is woefully inadequate when we are dealing with any kind of vocational rehab.

Ms. Shartal: I have got a whole bunch of specific things when it comes to rehab. The first is that we found in the last two years it seems that vocational rehab adjudicators seem to change every two or three weeks on a case. They never know who is going to have it next week. They are always relearning the file. In addition, they moved at the board from the two-claim copy of the claim system to the one-claim copy of the claim system.

It used to be vocational rehab kept their own copy of a claim file, which meant that they could authorize things and they could do things. Some time in the middle of last year in policies benevolence, they moved to the one-claim file. What does that mean? It means there is only one copy of your claim at the board now. Let's say I am in the middle of dealing with somebody's case and they are on vocational rehab, but you end up with a pension problem or an adjudication problem, the claim gets pulled away from adjudication and pensions and during the meantime vocational rehab cannot authorize anything because they do not have the copy of the file and the person's benefit and service could cut right in the middle. That they have done in the last year.

Further, their whole principle is that they will only offer horizontal rehab. What it really means 9 times out of 10, is do just like the Unemployment Insurance Commission, go out and find yourself a job, preferably at minimum wage.

Then you get into the new 4.5—the new changes—which is really the catch 22. You can only get supplement to continue your rehab if the pension officer decides that you cannot earn 75 per cent of your pre-accident earnings with your earnings and your pension. What it does in practice—because it has got the 75 per cent limit and it is not a job you have, it is a job you might get—is that for low-wage workers or for high-wage part-time workers—which we have a lot of high-wage part-time workers—you cannot pass threshold. When it comes, we have been through these appeals in which they will say: "Yes, you don't pass the threshold on 4.5.5. We can't give you supplement, but you can still get vocational rehab services."

I do not understand how someone could take advantage of vocational rehab if they have got no money in the meantime to pay their rent. At the same time, they are subcontracted to places like the ??Peel Assessment Centre, which for our industry, what do they do at the Peel assessment? They assess somebody for work. The assessment test is eight hours a day in light industry. They have them sorting things, assembling panels and tying ropes. Somebody with an ??really serious injury cannot do eight hours a day in light industry.

What happens is that they get deemed unemployable. If you are deemed unemployable, by definition, you cannot be rehabed, you cannot get supplement, you cannot get benefits and you are stuck with your benefit rate. It is like they have set up a straw man. If you cannot meet the test, they do not have to give you any rehab. This, they all did in the last year and a half.

Mr. Wildman: It is interesting because when the rehab people were before us I gave them a purposely extreme case of one that we have a lot of in my part of the province ?? I used the case of a logger. You could use a miner. It is the same thing.

R-1740-1 follows.



(Mr. Wildman)

~~... extreme case, but one that we have a lot of in my part of the province as a~~
~~92 I used the case of a logger. You could use a miner. It is the same thing.~~
A francophone, grade 5, 45 years old breaks his back and can never go back in the bush. What do you do with him? How is he going to be rehabilitated? I think it is fair to say that the representative of the rehab people who appeared before us said he thought that case was a very interesting one and he would like to look into it but he did not really have the responsibility.

1740

Ms. Shartal: (Inaudible)

Mr. Wildman: I would like to ask one other question with regard to the occupational disease issue. Basically what you are saying is that the benefit of the doubt should be provided to the worker, so if there is evidence that seems to indicate that exposure to a certain type of workplace might be related to a disease, that benefit should flow to that person or to his family until there is evidence that it is not related.

Mr. Carriere: Sure.

Mr. Wildman: OK. You used the example of the stomach cancer studies. What is the position that the board has taken that it uses to justify the failure to extend benefits to gold or uranium miners who have contracted stomach cancer?

Mr. Carriere: The position is that the study that they have, although it leads to that direction, is not sufficient and further studies are required. In other words, it is a board decision. It says: "You have got to continue. You cannot just show that there is a relation, but you have to prove." In other words, you have to take some other studies to prove conclusively that it did not happen any other place. In other words, it is the reverse.

Mr. Wildman: It might not be related to something else.

Mr. Carriere: That is correct. If you look at the last Muller study in 1983, the second study was for two things. The first one had clearly indicated that there was an increase in lung cancer that was related to the mine. The second one was to establish whether the cancer was in the mine, and also it was to find whether it was not other causes like smoking or lifestyles. In other words, they were commissioned to try to prove that it was not, not that it was, but that it was not work related.

That should be until that is proven, then the benefit is that it obviously be from the industry. It is the same thing with any smaller industry, and it does not have to be lung cancer. It could be anything and any respiratory problem that you have. If there is a chemical that you are exposed to that we know and there is sufficient research, whether it is animal research or whatever, that shows that exposure to that chemical caused a certain disease and you proved that the worker was exposed to that chemical and he does have that disease, that should be sufficient and he should not have to prove and we should not have to wait until so many people die and we pile bodies. The board in this case says, "We need further studies because you

have got to prove that."

Mr. Wildman: As I recall the Muller study, it indicated that there was a specific numerical increase in the number of lung cancers related to exposures and then when that was combined with smoking, for instance, it went up even higher. So the smoking argument could be used, but it still did not destroy the argument of it being related to the work.

Mr. Carriere: They researched two things. They researched the smoking and found that smoking had nothing to do with the increase because the group that they compared with were nickel miners. He found that nickel miners smoked just as much as gold miners and nickel miners do not get that increase. That is one. The other thing was lifestyle. For the stomach cancer, there was that argument that a lot of countries have a higher increase in stomach cancer for whatever they eat or something, and they found that in the stomach cancer the majority of them were not European but were workers who came from America. Those two things went out the window.

~~Mr. Shantal: I just want to say something that was brought to my attention recently which is absolutely absurd. It deals with industrial diseases, that is, they will only pay an industrial disease claim if you are~~

R-1745-1 follows.



Ms. Shartal: I was going to say something that was brought to my attention recently, which is absolutely absurd when it deals with industrial diseases. They will only pay for an industrial disease claim if you are disabled, if you are so sick you cannot work. The question came up with the claim of a friend that I was looking at, who has been sensitized to something. That person is completely well, he just cannot go back to work. If he goes back to work he is going to get incredibly sick. It is the same problem we have with recurrences. They say, "We will not pay you now. However, if you go back to work, and you get incredibly sick, then we will pay you."

Mr. Wildman: It is like silicosis.

Ms. Shartal: "We will not give you rehab, we will not retrain you you," and we have this all the time with recurrences, people mostly go back to the plant, their arms are going to fall off, but the board says, "At this point you are fine, unless you are in bed and unable to move, we will not pay you, so go back and make yourself sick."

Mr. Wildman: Yes. We raised that with them too. It was one case that I pointed out where a worker who has developed asthma related to the workplace. As long as he is not in that workplace, he feels fine, but he knows if he goes back, he will have respiratory problems. He cannot get compensation because, when he is not there he is okay.

Mr. Wilson: If I may just interject with a comment, I think this is probably the area that is the most alarming area that will impact upon workers' compensation. Our data and our research has shown to us that in this province alone, there are approximately 70,000 substances in work places of varying levels of toxicity and are detrimental to the health of the worker. This is part of the difficulty we face in the compensation board. If you go back to the days in which the board was first constructed, workers died of consumption and black lung, and that is what everybody died of. If you were not killed on the job, that is what you died of.

Technology has researched that to, I think, a much finer degree today, and so the preoccupation with activities in the board is still basically accidents, but more clearly what we are now finding is that workers are injured through disease as well. From a worker's viewpoint, it makes little difference whether they fell off a ladder and broke a leg or whether they were inculcated with some substance which again rendered them unable to work. So this whole area of industrial disease is one that I think is giving rise, in part, to the resistance to the WCAT decisions as they will come down the road, is, I think, conjuring up a considerable lobby around the question of cost of operating the board and benefits to workers and why the pressures are within the structure to deny workers benefits because they are too costly, and this whole cost containment aspect, rather than looking at it positively, in terms of the way that work is structured, such as other jurisdictions in the western world have been able to achieve, in terms of finding ways in which people can work where these accidents that we are talking about, these kinds of effects they have on our bodies is taken away. That process is then removed and, therefore, people can work without injury.

Rather than spending money on ergonomics, rather than spending money on preventative health care in the workplace, it seems that the tactic is that we are going to be able to correct costs by containing benefit levels of workers. What I am trying to signal, and we are signalling collectively here, is that

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the industrialeal disease that we have seen and identified to this point, is I really do believe, simply the tip of the iceberg, that five years from now, if we do not move now to begin to correct those situations, either in manufacturing or in mining or in the public sector or wherever it may be, construction included, then there will be one heck of a bill to pay by this province five years from now.

There are some, I think, who hope that workers will give up. I just do not happen to think that is likely to happen.

Mr. Chairman: A couple of members have questions. We only have a couple of minutes left, so that I wonder if we could go to those questions and then, if there is time, we can make other points.

Mr. McGuigan: I am very intrested in what Mr. MacDonald was saying about the rehab efforts that the ironworkers made and how they made placements that other people could not make. I marvel at someone in an office who has not done construction work himself, or done mining work, can determine that someone can move to a different job. That really confuses me. I wonder if you could tell us how you have done this?

~~Mr. MacDonald: As I pointed out, and I do know a copy here of . . .~~

1750-1 follow

1750

Mr. MacDonald: As I pointed out, and I do have a copy here of a presentation that was given regarding the Majesky report, and basically what we are talking about here is that the ironworker's trade is an unique trade in regards, as I pointed out, that we do a variety of work.

Mr. McGuigan: I see them here in Toronto at construction ??

Mr. MacDonald: For example, if somebody who is working on a structural steel job and maybe injured his knee or his elbow, or whatever, then what we have done is we have retrained them for a welder or we have retrained them to work on overhead doors or what have you, because we have that variety of work, and that is why I am saying that, when I go to the compensation board and I meet with a counsellor, and that particular counsellor does not have any idea of what that type of work is all about, and what our variety of work is all about and what our good relationship is with the somewhere over 500 companies that we look after. We can get those people to work in shops. We can get them out on foremen jobs, this type of thing. So we feel that we are much better qualified in getting these people out to work on good, respectable jobs, and not parking lot attendants or this type of thing.

Mr. McGuigan: That certainly sounds great, although it does strike me that perhaps it is a little easier to do it within that ironworkers group than ??

Mr. MacDonald: Basically what I am saying is that I am the ironworker representative full time on compensation and the worker adviser for the ironworkers, so that I am basically speaking for the ironworkers. I cannot speak for the rest of the construction industry, I do not have that authority. However, I do have the authority for the ironworkers, that we are doing a good job of putting our people back to work, and motivating them.

Mr. McGuigan: I certainly commend you. I brought up the case, like Mr. Wildman, of the lumber-forest worker, truckdriver who becomes incapacitated, cannot drive his care any more, minimal education. How do you put that guy behind a computer, or whatever?

Mr. Wilson: If I could comment, in two ways. First, I think, and probably the history will bear this statement out, I think probably why the ironworkers went the way they went is because they were not getting the kind of satisfaction they got with regard to rehabilitation under the legislation and the implementation of it.

The other thing I think on the positive side is that it is not necessary, I do not believe, for us in this province to reinvent the wheel. There are a number of jurisdictions generally in western Europe and Scandinavia where countries have devised way of making people useful in the process or work, in the example such as you have raised, and I am sure you would join with me. The object here is to give people their dignity back by putting them usefully back in the economy as workers who, if they can continue to provide for themselves and for their families.

We accept also, concurrent with that, that most accidents that happen in the workplace where most diseases are contracted are not really the

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individuals fault, by and large. Those things are not planned and it is usually the circumstances in a situation which creates that. I think we ought to be turning our minds at looking to the experience of others, and what can be done with that truckdriver in the forestry industry. How can that person be gainfully employed?

Getting away, departing from the numbers gained, departing from the containment game, if we could only focus on the worker and say that our job is to get that worker back to work, now what does it take to do that, what skills do we have to provide that person, what training is required? In some cases it may be a short duration, in some cases it may be a year, but if the objective is to get that worker back in terms of how our economy works and how our government works, I think, when you look at the numbers on the end of the 10-year experience, we probably save the taxpayers considerable dollars in this province because we have been able to do that.

Mr. McGuigan: I just want to make another pertinent comment. It is nearly six o'clock.

Mr. Chairman: Mr. Villeneuve had one question, just as long as you leave him enough time.

Mr. McGuigan: In reviewing the mines, health and safety in the mines, we came across a number of mine owners or managers of mines, who boldly stated that safety pays. Just simply on a dollars and cents basis, setting aside the human side of it, which is very important, but just on the dollars and cents basis, a number of them . . .

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(Mr. McGuigan)

~~boldly stated it safety pays, statistically on a dollars and cents basis, setting aside the human side of it, which is of course very important, but just on a dollars and cents basis, a number of them said that it pays.~~

Mr. Wilson: If I could interject, the same way preventive health care in society pays in terms of reduced health costs.

Mr. McGuigan: What I am coming at, we may be seeing some little different attitudes in modern management than occurred with these cases that built up over the years that you are now dealing with.

Mr. Wilson: I would agree with you, if we could revise that to modern encouraged management.

Mr. McGuigan: Enlightened management.

Mr. Wilson: Yes, but I am not making light of the situation. I am sure Norm can speak chapter and verse on this, but if you take Inco where it was 10 years ago and talk about Inco where it is today, notwithstanding the difficulties of the past year with regard to fatalities, it has come a considerable distance, but a lot of that was that Inco finally realized it had a problem with its workforce and the union pressing very hard. I am not beating any drums here. It was just the facts. Then the two of them sitting down co-operatively and working their way through the problem. I am sure Norm concurs with that.

Mr. McGuigan: I was visiting a plant within my own riding where I had intervened on a health and safety matter—I am not going to say where—

Mr. Wilson: I hit close to the nerve.

Mr. McGuigan: I had intervened and the Minister of Labour (Mr. Sorbara) went in and cleaned it up. I was visiting a chap and I do not think he knew I was involved. I was visiting the manager and he was telling me how their great health and safety program was now working. He was very proud of it and it was now working.

Mr. Wilson: There is a long way to go.

Mr. Villeneuve: There are two different areas here that concern me. First of all, what is the average waiting time for an appeal?

Mr. White: One year.

Ms. Shartal: That is to get a hearing.

Mr. MacDonald: You are lucky, Jack.

Mr. White: That is to get a hearing, I am saying.

Ms. Shartal: That is not to get a decision. That is to get a date.

Mr. MacDonald: That is to get a date for a hearing.

Mr. Villeneuve: Now, this has been aggravated over the last period

of time, in spite of some regional offices being opened? So that has not solved the problem?

Mr. Crocker: To a degree the regional offices have caused a little problem because they then introduced another appeals system where the first stage of appeal is to go back to the claims adjudication centre in the regional office. After that, there is no automatic. It is now sort of like you have to write three letters instead of the one. Where we used to write one letter requesting an appeal date, now you have to resubmit to the claims adjudication branch in the regional office. If it is not successful there, they do not automatically send it down for decision review, you have to send another letter in requesting that it go to decision review. If it is not successful there, in the old days, they used to go automatically to the hearings branch and now that does not happen. They refer it back to you and you have to write yet another letter. So it sort of becomes a bit of a cumbersome process.

It is a catch-22 also. I welcome the opportunity to have claims reviewed in London because some of them are successful there, but by the same token, it is a shame that it is not sort of an automatic process. If it is not successful at this level, let's send it on to the next level automatically. That is definitely not happening.


Mr. Wilson: A footnote too and an important one I think, remember that the other aggravation is the sheer weight of the numbers which are not abating; they are increasing.

Mr. Villeneuve: Coming from the far eastern part of the province, we appreciated and thought the Ottawa office would have solved a lot of problems. It may have solved some, but I think I can echo what you are saying, not knowing a great deal about the system.

Another area that concerns me is rehabilitation. It is a double-edged sword. I think my friend the member for Algoma (Mr. Wildman) came out with a scenario very close to what we have run across. This man has lower back problems, as many people in the area that I come from and maybe right across the province have. He can sit and drive a school bus for an hour and a half twice a day and get away with it. The job he was doing before he cannot now do.

However, the compensation people have come along and said, "You must take rehabilitation or be cut off from the \$250 a month" or whatever the small amount is. It takes all of the financial resources that he has, including the token amount he gets from WCB. He was forced to take rehabilitation. Is this the other edge of that sword that we were talking about, at the peril of losing his gratuities or the amount of money he was receiving from WCB and also, the likelihood that if indeed this does not get him a job, which is highly likely, his job as a school bus driver is in...

R-1800-1 follows



(Mr. Villeneuve)

~~his gratuities or the amount of money he was receiving from WCB and also, the likelihood that if indeed this does not get him a job, which is highly likely his job as a school bus driver is in jeopardy.~~

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Do you have comments on that? What are his rights?

Mr. Wilson: Let me start just as a general observation because you have touched on a very interesting point. If one takes worker like that we will say who was injured in a car accident, the design of the rehabilitation process would be considerably different because it would be an individual design to fit that worker's situation, to bring them back to a rehab position. I think you would agree on that.

The other process I guess that is always a difficulty, and others will comment further, is that it seems that one of the views of the compensation board is similar to what we did in the First World War. We gave everybody the same size helmets because we picked the general size and we said, "That fits you." If it was a little snug, tough and if it fell off your face, tough. The reality was we were only going to make one size helmet. I think what we have here is a policy like that, that says: "Here is a guy who gets caught in the cracks which is different than the norm and yet nobody adjusts to him. He has to adjust to it." That is part of the problem that we have.

Ms. Shartal: The short answer to that is, of course, that is the way it works. You can refuse the job and appeal it, but that is going to take you two years.

You have the other cases, and I am sure all of us have cases like this, in which the employer is trying to cut their costs. They say, "Sure, I will take somebody back for light duties." They make up a mind-numbing idiot job. I have ones in which they tell someone, "Count all the birds." Or, "Climb up this long ladder and watch everything that falls down for eight hours a day."

This is their rehab because the employer has offered light duties. If they refuse the job, we can appeal it. We will not win it at the WCB. There are precedents to win it at the WCAT. To get the WCAT is two years. In the meantime, you have no benefits.

Mr. Wilson: I want to come back to the point I made and I will dwell on it, but it is very important because it deals with the attitudes that seemingly emanate from an institution of this province in which we live towards workers, that an injured worker, injured at work, is dealt with significantly different than anybody else in our society who is hurt in any other fashion, whether it be in a car accident or whether you fall down your own stairs in the middle of the night, whatever the case may be. The attitudes towards dealing with that individual is considerably different than the worker who is hurt at work. It seems to be that what we do with workers at work is try to get them back as fast as we can and whatever shape we can get them back, whether it lasts or does not last and then if it does not last, what you do is try to find a way to knock him off the list.

What we are putting before this committee today as part of this process is that attitude has to change out there and I again want to come back to the

Mr. Wilson

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point I made earlier, it is linked inextricably to the attitudes about what our workplaces ought to be. Because if we can clean up the workplaces like other countries have done, you would just see those compensation numbers fall right off the cliff. They will come down immensely. We have to get to that point yet.

Mr. Chairman: Mr. Wilson, thank you very much, you and your colleagues for coming before the committee.

Mr. Wilson: It has been our pleasure and we thank the members of the committee who were here to listen to us on this very important issue.

The committee adjourned at 6:03 p.m.



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(Printed as R-15)

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

ANNUAL REPORT, WORKERS' COMPENSATION BOARD, 1986

MONDAY, JUNE 13, 1988

Draft Transcript

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

CHAIRMAN: Laughren, Floyd (Nickel Belt NDP)

VICE-CHAIRMAN: Wildman, Bud (Algoma NDP)

Brown, Michael A. (Algoma-Manitoulin L)

Collins, Shirley (Wentworth East L)

Grier, Ruth A. (Etobicoke-Lakeshore NDP)

Leone, Laureano (Downsview L)

Marland, Margaret (Mississauga South PC)

McGuigan, James F. (Essex-Kent L)

Miclash, Frank (Kenora L)

Miller, Gordon I. (Norfolk L)

Wiseman, Douglas J. (Lanark-Renfrew PC)

Substitution

Lupusella, Tony (Dovercourt L) for Mr. Leone

Also taking part:

Johnson, Jack (Wellington PC)

Clerk: Decker, Todd

Staff:

Madisso, Merike, Research Officer, Legislative Research Service

Witnesses:

• From the Council of Ontario Construction Associations:

Dolson, Doug, Chairman

MacDonell, George, President

Sweica, Carmer, Chairman, Workers' Compensation Committee

Frame, David, Executive Vice-President

From the Canadian Union of Public Employees, Local 1750:

Haffenden, Carol, President

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Monday, June 13, 1988

The committee met at 3:35 p.m. in committee room 1.

1986 ANNUAL REPORT OF THE WORKERS' COMPENSATION BOARD
(continued)

Mr. Chairman: The resources development committee will come to order. We are here to continue to look at the annual report of the Workers' Compensation Board.

Just before we do that, with the Council of Ontario Construction Associations, there is a procedural matter with which we must deal, and that has to do with the draft report on health and safety in Ontario mines.

We had agreed last week that the report would be distributed and then today we would come back and have a quick discussion on what to do next. We either send it for printing or set some time aside for a further look at the report. Can we have some discussion on that?

Ms. Collins: I have discussed this with some of the other members of the committee. They feel there is more discussion required on some of the recommendations as well as in regard to structuring the report itself. I would like to suggest that we set aside one afternoon to do that.

Mr. Chairman: I am happy to hear you say that. I think it is a good suggestion because I have the same kind of feelings about it, too, that we need to have a look at it.

The committee is to deal with WCB today and Wednesday.

Thursday, at this point, is still an open day when we are going to talk about committee scheduling and so forth. Is it agreeable to members that on Thursday we do this. I will be surprised if we will even know by Thursday what other business is going to be referred to the committee, so it is probably premature to deal with scheduling of the committee on Thursday anyway.

Is that agreed that on Thursday afternoon we will have an in camera session—the report is not public yet, so we will have an in camera discussion—on the report, as it is now in our hands? Are there any problems with that? Okay, we will do that on Thursday then.

COUNCIL OF ONTARIO CONSTRUCTION ASSOCIATIONS

Mr. Chairman: This afternoon—sorry for the delay, gentlemen—we have the Council of Ontario Construction Associations. Mr. Dolson, welcome to the committee. I would appreciate it if you would introduce your colleagues.

Mr. Dolson: Thank you. On my immediate right is George MacDonell, president of the Council of Ontario Construction Associations. On my immediate left is Carmer Sweica, the chairman of our workers' compensation committee within COCA. On my far left is David Frame, executive vice-president of COCA.

Mr. Dobson

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To begin with, I just want to update you a little bit on what COCA is and how big the construction industry is in Ontario. After a few minutes, George MacDonell will show you the presentation that we have on the Workers' Compensation Board.

The size and importance of the construction industry is indicated by the fact that the annual volume is \$20 billion per year in Ontario, with 10 per cent of the gross provincial product, and seven per cent of the provincial workforce encompassing 336,000 employees in construction alone. You can see there is a total payroll of approximately \$10 billion, and the taxes paid out of every dollar in construction amounts to \$3.4 billion which are sizeable figures for the construction industry. You will all get a copy of this, by the way.

The next is a list of the members of COCA which entails local mixed associations which are associations from the various cities all around the province, and then the Ontario trade associations which takes in subtrades and have specific interests of their own trade. There are 45 associations within the group representing approximately 8,000 employers with a payroll in the neighbourhood of \$75,000 to \$80,000, only within COCA. We have a long way to go yet to bring in more members of COCA, and that is coming on stream.

We feel we have some concrete objectives within the organization. ~~I do not think that anybody can argue with those objectives, to ensure the profitable growth of the individual firm and a reasonable return to the owners and investors. I am sure you are all appreciative of the fact that~~
~~nonprofitable.~~

R-1540 follows

(Mr. Dolson)

I do not think that anybody can argue with these objectives: (1) to ensure the profitable growth of the individual firm and a reasonable return to the owners and investors—I am sure you are all appreciative of the fact that nonprofitable firms do not pay taxes; (2) to continue to improve the standard of living of industry personnel, and health and safety in the work place; and (3) to supply construction consumers with high-quality products and services on an efficient, internationally competitive basis.

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I am going to turn it over to George MacDonell who will show you the balance of it. I think you will be a little bit surprised by some of the figures you are going to see.

Mr. MacDonell: I will start by showing you the way groups make up the Ontario assessment of \$64.5 billion or some 4 million workers in the province. You see here that construction is one of the larger segments, this being—

Mr. Chairman: We are having trouble picking you up on Hansard, and we really like to have a word-by-word transcript.

Mr. MacDonell: Would you like me to wear a mike?

Mr. Chairman: We do not have one here. Is it possible to sit there and go through it, or on the other side and go through it?

Mr. MacDonell: I think so.

As you can see here, construction is one of the big segments. In this group, there would be firms like General Motors. Essentially almost all of these groups except construction are inside workers where the worker has a long-time association with his company. As you can see there, we represent about 70.2 per cent of the total payroll.

Here we would like to review with you the total number of accidents per 100 workers compared to the rest of the province. The legend is blue for construction and the "non CI" stands for "nonconstruction industry."

What it shows is that since 1966 there has been a steady improvement in the accidents per 100 workers. There has actually been, during this period of time, about a 47 per cent reduction in the number of accidents per 100 workers. While the rest of the 4 million workers have shown some improvement, unfortunately there is a trend upward here in the last few years. But 1987 is not shown here. We now have the 1987 figure, and it will show a further reduction to about this point. We have made some real progress.

I know you are going to ask us the question: That is fine as a ratio for 100 workers, but what about in total? This chart shows the number of total accidents for the nonconstruction segment in this sharp, unfortunate blip up. But despite the growth in the construction industry, as you can see, we have fewer accidents today in total than we have ever had.

If we look at things like fatalities, admitting that even one fatality

Mr. MacDonell

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is too many, we have had a 60 per cent reduction.

Mr. Chairman: Excuse me, how many employees are in the industry?

Mr. MacDonell: In our industry, there are approximately 336,000.

Mr. Chairman: What is the difference, in the last 20 years, in that absolute number of—

Mr. MacDonell: You see, there is an absolute reduction from 50,000—

Mr. Chairman: No, I mean numbers of workers.

Mr. MacDonell: The number of workers has gone up probably in the last five years from 50,000 to 60,000 workers. There has been quite an increase in the number of workers. That is why, of course, we showed it on the basis of the accidents per 100 workers, so you could that in balance.

~~I think between the accidents in absolute terms and per 100 workers that we have more workers~~

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~~basis of the accidents per 100 workers so you could keep that in balance.~~ I think between the accident in absolute terms and per 100 workers that we have made some dramatic improvements.

Now then, one of the questions you are going to ask us is, and I have to change this so that you can get this whole thing on the same screen, the performance of the construction industry against the major rate groups. There you see the big groups of hospitals, utilities, farmers, pulp and paper, industrial, transportation, showing over here the construction industry in blue, and compared to those major rate groups, you can see how mining is better than it was. Forestry has made a great improvement, but there has been no improvement to compare with the performance of construction. That is the background on our performance compared to ourselves in our past history and our performance compared with the other major groups in the province.

Here we have the claim duration of construction workers. What this shows is that back here in 1969 and 1968, we had the average claim duration of an injury at 29.3 days. Until 1986, this has risen until we now have close to 99 days. Now when you consider that a construction worker is paid with today's rates, approximately at 50 per cent bonus, this becomes a serious problem to employers and to workers alike.

Mr. Chairman: I do not understand the word "bonus."

Mr. MacDonald: For every dollar that the average worker in the province earns, a construction worker earns \$1.50.

If you look at what is sort of the bottom line of the cost of compensation to the province, you see here that from the period 1970 to 1986, the comparison between the nonconstruction industry employers employing about four million employees in the hatch and in the blue colour the actual cost of an injury to the construction industry. You can see that construction costs have risen from about \$1,700 per accident to about \$17,000 per accident.

Now you then compare construction performance with the nonconstruction performance, keeping in mind the rapid decline like that in the number of accidents, it seems that we have a very severe problem here. If you look at the slope of the curve, you can see that the curve, if nothing changes, will double the costs in four years.

Mr. J. M. Johnson: Just on a point of clarification: What do you mean "average costs per injury"? Which costs?

Mr. MacDonald: You take the total number of injuries and divide it into the total cost of injuries for each of those years.

Mr. J. M. Johnson: But what does "costs" mean?

Mr. MacDonald: All of the costs associated with that injury.

Mr. J. M. Johnson: Medical?

Mr. MacDonald: Medical.

Mr. J. M. Johnson: Retraining?

Mr. MacDonell: No, there would be no retraining.

Mr. J. M. Johnson: Just medical?

Mr. MacDonell: Just the cost of the administration and all of the costs associated with that injury as reported by the worker's compensation annual report.

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R-1550 follows



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Mr. Brown: I just wondered, are we talking real dollars or are we talking—

Mr. MacDonell: Yes. I would like to deal with that in a minute. Real dollars would be —inflation would be about here, but I will show you the effect of inflation later on in two senses, one for the province as a whole because there are factors like inflation and new legislation promulgated by the House, which will affect the costs of course.

Now I think the committee will be very concerned about that slope and very concerned about the fact that we really do not understand how this has come about or why it has come about. Because each employer has other obligations to other programs, even though those programs may be federal.

Mr. Chairman: ?? To go back to that chart, if the average length of time off the job has tripled in the last 20 years, which would mean more severe injuries, why would you be surprised at the cost going up so dramatically as well? Is that not the explanation?

Mr. MacDonell: Yes, but this has gone up so much faster.

Mr. Chairman: Faster than the length of time off?

Mr. MacDonell: First of all, we do not understand the reasons for that because the severity of the accidents have declined.

Mr. Chairman: But they are not recovering very fast. They are off for 98 days.

Mr. MacDonell: Yes.

Mr. Chairman: That is the average, right?

Mr. MacDonell: Yes.

Mr. Chairman: Then it is inevitable that the costs would skyrocket. That is three times, is it not?

Mr. MacDonell: Yes. In our case, they over 1,000 per cent.

Mr. Chairman: Yes.

Mr. MacDonell: One is 300 per cent and over 1,000 per cent.

Mr. Chairman: I see. OK. I will not get into the argument with you on dollars, but is that the 1,000 per cent in constant dollars?

Mr. MacDonell: We will deal with that next.

Mr. Chairman: OK.

Mr. MacDonell: Because we have a federal responsibility too, we have looked at the increases in the red ??hatch here in Canada pension plan and in the orange hatch unemployment insurance. Then we have looked at the excess

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cost of workers' compensation over inflation, which is shown here in the blue column. Here you see, if you add the employer's contribution, which in the case of workers' compensation is 100 per cent and the other is on a shared basis with the employees, you see an increase that is doubling every three and a half years. As far as we can see, the federal authorities do not consult with the provincial authorities about this matter. It looks now, as we now have the 1987 results, as if we have gone from about \$300 to \$3,000 per employee for these three programs.

Now then, we would like to show you what the organization is doing in its work with the Workers' Compensation Board. We work very closely with a large committee under the chairmanship of Carmer Sweica here and have a very close working relationship with the board. In the past, we have been wroking with many projects, but these are three of the most important. The ??CAD-7 experience rating system, the creation of the construction integrated service unit, ISU, and the monthly payment of premiums based on actual payroll rather than quarterly payments based on estimated payroll.

If we look at our current program with the board, you see that we are working with a proposal to restructure the construction rate groups to better reflect current levels of risk in the industry. We are participating in the advisory board of the ISU, working with the specialized rehabilitation services to develop a modified work manual for construction and making recommendations and working through a special committee to reduce revenue leakage and, finally, reporting—

R-1555 follows



(Mr. MacDonell)

~~...working with the specialized rehabilitation committee to develop a
work manual for construction, making recommendations through a
special committee to make revenue leakage, and such.~~

Reportedly, the findings of our independent research relating to the industry's safety performance, accident duration and cost and effectiveness of current programs.

Last, we brought along a very abbreviated list of the major recommendations we think you will be interested in. What we really are concerned about on the matter of workers' compensation is a rehabilitation system that gets injured workers back to work in a reasonable period of time and at a cost that can be sustained. Of course, what we are concerned about is that we have neither.

As we have shown you, duration of the claim has tripled and the costs are shocking, whether you include inflation or not. The construction industry is showing a steady improvement in accident prevention. No other group in that rate structure I showed you at the very beginning has these kinds of increases.

These are some of the things we think would be very helpful:

The first is the adoption of the wage loss system, as recommended in Professor Weiler's 1986 report.

We heartily endorse, and we are deeply involved in, the workers' compensation rehabilitation strategy.

We believe in a legislated right-to-reinstatement system that establishes the responsibility of not only the employer but also the doctor and the employee.

The Council of Ontario Construction Associations also recommends that employers be encouraged to continue their direct support of injured employees by revising the act to allow the Workers' Compensation Board to develop and incorporate a system of voluntary deductibility into the system.

Mr. Lupusella: Could you elaborate on the last sentence?

Mr. MacDonell: Yes. That would allow the employer to keep the employee on his payroll for the first week so that the employer could become involved with the employee either at the hospital or with his doctor on what sort of treatment would allow him to come back. For the first week, the employer would pay his full wages and be accountable for all the treatment and all the relationship with the doctor. If the employee had a language problem or any difficulties, his employer would be able to work with the doctor or the hospital or whoever was involved, with his family if necessary.

Our second from last recommendation is that a clear understanding of "an accident" and "compensability" should be established. This is a very open issue and no one is really clear as to what these words mean.

Last, we recommend amendments to section 104 to establish acceptable levels of debt-equity ratios for any rate group and for the system as a whole.

Mr. MacDonell

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We have some other recommendations we are working with, but at the moment, this summarizes most of the important ones to us.

Mr. Lupusella: The previous presentation—that is, the rating system which has been implemented in the construction industry. Is the rating system being implemented in the industry as a whole or firm by firm?

Mr. MacDonell: Carmer, I think you are perhaps better qualified to answer that.

Mr. Sweica: There are 13 rate groups at the present time within the construction industry. So basically, I guess, the board has come up with a risk factor relative to those 13 rate groups. That is the way they slot in the rates per \$100 or whatever it is. As you will see or have seen, we have made a study through construction safety on the risk factors within the rate groups and through ??CAD-7, which is experience rating, we found there were a number of firms that should have been in one rate group rather than the other, expressing the risk factor from an insurance point of view.

~~Some have studied this and placed~~

R1600 follows



(Mr. Sweica)

So what we have done is studied this and placed these different ??copies---whatever you want to call it---into the risk factor. In other words, a more equitable risk factor within the rate groups. Coming out of 13 rate groups, we have come up with 11. We feel there is a right type of approach to take, and we have taken that to the Workers' Compensation Board to cost it out to see what affect it would have on the rates so that we get them at the right risk factors. The board is presently working on that cost, because we cannot get the cost. It is entirely up to them.

1600

Mr. Lupusella: Did you not make any presentation before the board to penalize, for example, the employer in relation to the rating system with the high incidence of accidents and reduce the rating system for those who have a low incidence of accidents. What is your position in relation to that?

Mr. Frame: That is what ??CAD-7 does, our experience rating system. It is not voluntary. Every contractor involved in the construction rate groups has to operate under ??CAD-7. Those with a positive experience receive money back. Those with a negative experience are usually surcharged.

Mr. Lupusella: Thank you.

Mr. Frame: If I can add a comment, I think it has been very successful. It has been in effect for three years now, and there have been significant reductions in the accident frequency each year it has been in effect.

The Vice-Chairman: Is that accident frequency or reported?

Mr. Frame: Pardon me?

The Vice-Chairman: Is that accident frequency or reported accidents?

Mr. Dolson: It is accident frequency because all accidents, in effect, are reported. If a man goes to the doctor and the company has not reported it, then it gets reported by the doctor and the employer hears back through the board anyway. So they are all reported.

The Vice-Chairman: Is the medical aid reported as well that does not involve lost time?

Mr. Dolson: Yes.

Mr. Frame: There are two separate levels of frequency, and both of them have shown significant decreases.

The Vice-Chairman: Any other questions or comments?

Mr. Haggerty: I was interested in one of your charts there that showed the previous accident rate and days lost from 29.3 to almost 96 or 97 per cent. You seem to have come up with the numbers but you have not come up with any reasons for the likely period of returning back to work. Is it because you are related to the construction industry? Is it because there is not what you call modified work involved in that because of the type of work involvement there—it is climbing, bending. I think of the bricklayers and

Mr. Haggerty

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blocklayers and the bending over all the time. Is it related to back injuries?

Mr. Dolson: There is probably a lot related to back injuries, but we feel in most of the cases it is related to the lack of sufficient rehabilitation to get the man back to work.

Mr. Haggerty: Whose fault is this, the lack of rehabilitation? Is it the fault of the Workers' Compensation Board or is it because of the medical treatment the person has received?

Mr. Dolson: We as employers feel it is the fault of the compensation board for paying out the money too easily and too irresponsibly without getting the man back to work, without having him rehabilitated in the proper way.

Mr. Haggerty: But surely the employee has taken the instruction from the medical profession and in most cases, and I imagine with a back injury, he has gone to a consultant in this particular area, and his monthly or weekly report has been forwarded to the workers' compensation. What you are trying to tell me is you are not happy with the medical reports coming in, because I imagine the injured worker is going by what the medical profession is telling him.

Mr. Dolson: That is part of it.

Mr. Haggerty: Just by coincidence, I have a letter here directed to a physiotherapist, for example, and I thought it might be appropriate if I could work this in here and maybe we could find out what some of the difficulties are. If I interpret the letter sent here, it means that there is going to be a further delay in having a person being treated fairly by the family physician or the consultant maybe, but anyway, it says:

??"Under the authority of Workers' Compensation Act, the board has the responsibility to monitor and control all treatment that an injured worker receives. In administering the act, it is not the board's intent to disrupt—

R1605 follows



(Mr. Haggerty)

~~Under the authority of the Workers' Compensation Act, the board has the responsibility to monitor and control all treatment that an injured worker receives. In administering the act, it is not the board's intent to disrupt or change this treatment, but rather to keep track of the progress and to regulate the costs as they apply to the claim.~~

"In most cases, the maximum benefit of physiotherapy"—and I suppose this would apply to chiropractic treatment—"is achieved within the first eight weeks of treatment." So, we are looking at 60 days there, you might say. "This cost will be paid by the Ontario Workers' Compensation Board and you may bill us directly. In some cases, your treatment may be expected to last longer than the normal eight-week period. If treatment is necessary beyond this period, it will require prior authorization by the board. Failure to do so may result in nonpayment of the additional treatments.

"Requests for extensions of treatment will no longer be accepted by phone." This was one way I suppose they get a doctor's message through quickly to the physiotherapist that he needed further treatment. "Effective June 1, 1988, the attached form letter should be used by your agency to request an extension of treatment. It is necessary to provide reasons for the request and the anticipated duration of further treatment.

"These form letters should be submitted to us two weeks prior to the end of the previously authorized treatment period.

"The worker's attending physician should be made aware of/have prescribed your request for an extension of treatment.

"If the extension is denied, you may wish to continue treatment on a private patient basis.

"If you wish further clarification, please contact..." "W. Bowman, team co-ordinator, claims adjudication services."

When I look at that letter, what they are suggesting here is that the board is not satisfied with medical evidence being supplied, but you are putting the worker in a position here that he is caught between the medical professional and the Workers' Compensation Board, in fact, may be even the employee trying to get back at work perhaps much sooner than he should.

When I think of the persons with back injuries, in most cases some of them are receiving medical treatment—physiotherapy or chiropractic treatment—and normally they most cases are sent right back, we understand, to the same job that caused the original injury. I do not know if it relates to this in your particular instance—in the construction industry—that you are putting him back to work on the same job, and he has been taking medical treatment. Without the conditioning the muscles to get back into the workforce, you shove him right back there, and he is back again on workers' compensation.

But I look at this letter here, and I would bring this to the attention of the chairman, that I find this letter rather provoking in a sense, to say that it is going to cause further delays in the treatment of the injured worker. He is the one who is caught in between this, and I see no reason why

Mr. Haggerty

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there could not be a phone call from the family physician to the physiotherapist or the chiropractor saying, "Yes, he requires additional treatment." But if you prolong that treatment, when perhaps he is almost back on his feet, you are sending that injured worker back another four or five weeks before he can get back on the job.

Mr. Frame: I think you should look at that letter in the context of the system and how it is changing. Up through 1986 and 1987, the average time before an injured worker would receive vocational rehabilitation through the board was in the order of 17 or 18 months. It is extremely difficult for an injured worker in a construction industry to be off that time, then to receive treatment and to be brought back into any sort of condition so that he can come back into our industry. It is the major concern we had when we met with the Minna-Majesky task force.

What you see in that letter is an attempt by the board to, first of all, have a much-quicker time period in which the worker gets treatment and to involve the doctor in the treatment process in bringing him back to work. We mentioned on our slides that we support the medical and vocational rehab strategy of the board. That is part of. It is going to ask that the employers try to make room to bring a man back, but it will ask the doctor to make commitments in terms of getting that man ready to be brought back to work, as well as the employee himself. We support that. It gets every body involved in the system.

Mr. Haggerty: No doubt, it gets everybody involved into it, but—

Mr. Frame: Well, it is going through the top of the ceiling, approaching 100 days, and the proper use of that system should start to bring that graph down.

~~Mr. Haggerty: What bothers me most in the letter is that it says, if you are not certified and require additional treatment, then you can get it through.~~

R-1610-1 follows



(Mr. Frame)

~~approaching 100 days with the proper use of that system should start to bring that graph down.~~

Mr. Haggerty: What bothers me most in the letter, it says if you are not satisfied and require additional treatment, then you can get it through private, you can go through OHIP to get them paid for, and you are putting the injured worker in a position there to say that he has to make the judgement on the advice given to him by the family physician, or even a specialist in this area. What you have done here is probably you have put him in perhaps more of a conflict than anything. He is saying now that we are not quite going along with what the medical profession is saying in this area. What the board is doing is challenging the medical reports that are coming in there now, but the poor guy who is injured, who gives a damn about him.

Mr. MacDonell: Our point, sir, is that we are not getting efficient, effective quick rehabilitation of injured workers and that is one serious drawback. The costs are accelerating at such a rate that per injury, they are doubling every four years, if you look at the last six years. We have a \$7 billion deficit and frankly, I cannot see how this can continue. We are in a crisis situation.

I am told that if there is one complaint that the members of the House have that is perennial from their constituents, it is complaints about the workers' compensation system. We can only conclude from that in the discussions with our labour leaders that no one is satisfied with the system. COCA's main objective is speedy, humane service and rehabilitation of the injured worker, and we are not getting it, but we are getting enormous cost increases. When you look at what this is going to cost the future employers and what it is doing to our competitive position, and you look at the lack of productivity of the industry, and you look at the soaring costs, we really have a problem that is shared at all levels. The worker is just as frustrated with the system as the employer is.

Mr. Haggerty: Looking at that letter there, I can see further delays and the question is—

Mr. MacDonell: As David Frame said, some of these delays may be over two years.

Mr. Haggerty: It depends upon how severe the injury is to the spine. Sometimes it may never correct itself. It has been known—

Mr. MacDonell: One of the difficulties, of course, is that modern medicine, in the field of rehabilitation, is beginning to see that people with back injuries should not be left at home, but that is not a common view with the family practitioner. He may not be up to date on the most recent treatments. So there is a tremendous gap between the modern knowledge on rehabilitation and that practice with many family physicians. It is an enormously complicated field to keep up with.

Mr. Haggerty: The question is, you mentioned the type of treatment that a person receives with a back injury and I have worked for years with workers' compensation and I know the problems with the workers' compensation, the difficulties they have and I know the difficulties with employers and employees, but I think half the time, and I stress physiotherapy and even chiropractors, drugless, perhaps one of the ways to look at it, because what happens, and I have seen it happen so many times and the number of persons who are receiving treatment from the medical profession and it could be the family physician or specialists, is the heavy drugs that are being used.

Mr. Haggerty

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If one takes that route, sure, you can get him back to work, but the body is numb, and that is when you get further aggravation or further injury from the original accident.

Mr. MacDonell: I think you are absolutely right. If you leave an injured worker at home for 18 months, or even six months, the chances of him being reinjured when he comes back to work, when the union, if he is a union employee, sends him to work for a construction company, and he is out of shape and not ready to take the kind of work, much like an athlete, you would never send an injured athlete back on to the ice without preparing him.

Mr. Haggerty: Conditioning.

Mr. MacDonell: We do not do that. So the longer he is off the job, the greater risk there is for perhaps an even worse accident, and that is a great concern to us. That is part of the multiplier problem that is . . .

1615-1 follows



hm
(Mr. MacDonald)

~~the longer he is off the job, the greater risk there is for perhaps an even worse accident, and that is a great concern to us. That is part of the multiple problem that is sending up these costs.~~

The Vice-Chairman: We have other questioners, Mr. Haggerty.

Mr. J. M. Johnson: Mr. MacDonald, you made a point a few minutes ago. You said that no one is satisfied with the present system.

Mr. MacDonald: Perhaps that is somewhat of an overstatement.

Mr. J. M. Johnson: Then I would like to say it, if you did not, because I am extremely frustrated with the workers' compensation results. I have a construction company that is doing an excellent job, their rates keep going up and they are hit, no matter how safe and cautious they are, they pay the price for someone else, and they are very ??

On the other hand I have a constituent who just called yesterday. He is so frustrated with the system that a year ago he drank antifreeze and ended up in the hospital and nearly died. He was there for many months. He is to the point now that he needs psychiatric help. He has again threatened to do away with himself unless something happens. I cannot get help for him. I cannot get the people to particularly give a damn. They have ?? the system and no one cares.

Mr. MacDonald: I hear that from construction employers all over the province, that is a constant, reoccurring thing. We have a serious problem with the rehabilitation of injured workers.

Mr. J. M. Johnson: I have no answer. I really do not have a question but there is something wrong.

Mr. Lupusella: Talking about rehabilitation, I share your frustration and I thin that, if you go back a little bit to your initial statement about the climbing of money which is spent, I think that a lot of people are paid for a certain period of time, maybe four or five months. It is the option that they are partially disabled and therefore able to do light jobs, and the inability of the Workers' Compensation Board to find the light job, and therefore, receiving the money without rehabilitation. It is a paid-out system, giving away the money without receiving concrete help in relation to rehabilitation.

I am just wondering if your position is to expect that the Workers' Compensation Board can take its own initiative of rehabilitation without the co-operation of the industry. Again, that is my personal thought. What your industry is able to offer to the Workers' Compensation Board, some sort of model to be implemented in relation to rehabilitation and what kind of model did you think of? We cannot expect that compensation will do the job itself without the co-operation of the industry. Let us face it. If you go back, as I stated before, to the premise that a person is partially disabled, and on that the ?? is able to perform light duty and the light duty is not offered by the industry, this man is going to be paid by the Workers' Compensation Board because in his own mind he is co-operating with the board to find suitable employment. That is money paid out without any result and I think it is time for the industry to get together and say that is what we are offering to the rehabilitation department or the Workers' Compensation Board to rehabilitate

Mr. Cupusella

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these people.

I am just wondering if your industry thought about some concrete ways of doing something about it. On the other hand, I can visualize the climbing of the costs paid out to injured workers.

Mr. MacDenell: There are two approaches at the moment. Carmer, perhaps you can deal with one of them. The first one is that the employer spends \$10 million a year with the Ontario Construction Safety Association, which is a superb organization which has helped us reduce accidents. So the first thing is to try to stop the accidents in the first place. Obviously that is where we start. That is where \$10 million goes.

Mr. Sweica is chairman of perhaps the best workers' compensation association in Ontario, which ~~deals constantly with the board, helping them to develop~~

1620-1 follows



(Mr. MacDonald)

~~of perhaps the best work and compensation agreement in the industry~~ which deals constantly with the board, helping it to develop its strategies. Perhaps you would like to comment on that, Carmer.

1620

Mr. Sweica: As George mentioned, construction safety, their approach, the preventive approach, is very, very good. We like what they are doing. We take advantage of it. As you have seen in vital statistics, the frequency is going down, which means there obviously is some good coming out of this particular organization.

The dilemma we have, which you addressed, is if we are a union contractor located in Toronto, and we happen to be working on a job site in Blind River, for example, then we go to the union hall in the local area, which is probably Sudbury or Sault St. Marie. We could be on that particular project for a duration of three or four months. If a worker gets injured, say, with a back problem in the third month, he is off on compensation and probably going through a rehab program. The job ends, and that is it. These workers have all come out of union halls in the local area. Light, modified work—we do not have any light, modified work because we are not in that area anymore. We rely on a union hall to supply that labour, wherever we go, if we are a union contractor.

As a result, when this worker is available for light, modified work, we cannot give him a job. The union states that he is not capable 100 per cent for work as an electrician, for example. Therefore, he continues on this compensation because that is in the program. How do we get around it? I do not know. It is a dilemma for the construction industry.

The Vice-Chairman: The ironworkers appeared before the committee as part of the Ontario Federation of Labour presentation. They indicated that, while they had a rather specialized type of situation because their jurisdiction covers a variety of work from light duty to heavy work, they felt they, as a union, were better able to rehabilitate their members than was the board. They felt that they should be able to take over the rehabilitation and be able to place workers rather than, from their point of view, have the board simply send the injured ironworker to the labourers' union to see if he could get a job sweeping floors or something. They felt that they can, in fact, rehabilitate better than the board. How do you respond to that?

Mr. Sweica: I commend them. The trouble is that the other unions, when you approach them, they say: "No, he is not—"

The Vice-Chairman: It might be more difficult for a bricklayers' union to—

Mr. Sweica: Well, a bricklayer, an electrician, or a millwright, as such. But the thing is if we were able to give them modified work, for example, as labourers, we immediately cross union jurisdiction lines and there is no way they are going to go along with that, we have been told.

We have a dilemma. We do not want that worker out there sitting and not doing anything because it is no good for him. But what can we do? It is quite

apparent that there has to be some legislation where union, management, the medical profession, and the board, as partners, get in on this and work out some sort of a system where we can do something for the worker.

Mr. Dolson: We agree with you that the union, in many cases, is far better to deal with the situation by giving the man light work, if for no other reason than the fact that the union deals with all signatories to his agreement, whereas we, as contractors, as Carmer says, go into one area and then we leave again. We are very transient in our type of business, but the union has many people to deal with to find the employee work.

Mr. MacDonell: I would like to quote from the Minister of Labour (Mr. Sorbara) who, in looking at these statistics, said something which I think concerns the members of the committee when he said: ?? "This is an enormous waste to the province. This whole thing is a dreadful waste, a waste of manpower, a waste of money. It is wrong in every sense. Besides, from what I can see already, it seems to be a traumatic experience for the man who is left at home, who is no longer the head of his household" and so on.

~~I think we would agree that there is a time to forget the past and look at the kind of medical~~

R-1625 follows



(Mr. MacDonell)

~~... longer the head of his household " and so on.~~

I think we would agree that there is a time to forget the past and look to the medical profession, the legal profession, the labour unions, management, and the Workers' Compensation Board to find some way of making rehabilitation the focus, rather than pension payments.

I would like to just show you what has happened, if I may, and to deal with that question earlier about the effect of inflation on one of these major costs. I have segregated here, for the province as a whole, the workers' compensation 1986 pension payments of \$356 million. This is pension payments only.

Here, if you look, you will see the base of 1976. Inflation made that impact on the costs. The workforce made that impact. New injuries affected this amount. The legislation from the House improved the situation that amount.

But we have here an unexplained 13.5 per cent of the total cost.

This, I think, in the present system is inevitable, where you have the injured person, the employer, and then a third party who is not accountable to the employer for the administration of the injury and the rehabilitation process.

If you add this up through the system, we think that since 1976, a 10-year period, there has been a loss of approximately \$140 million. As the Minister of Labour (Mr. Sorbara) has said, that is regrettable. Even if you can agree with these numbers, and it is very difficult for him to do so, it is a regrettable loss.

What we would like to leave the committee with is the idea that looking to the past is not an adequate solution.

Mr. Sweica: I just want to make one comment on what George said on pensions. In looking at the 13 construction ??rate groups for 1987, because we have the figures from ??construction safety, we have found out—and this is the first time it has happened—that the pension costs have exceeded a temporary total compensation. This was the first time it has ever happened, and those pension costs in that one year, 1987, were 40 per cent over 1986. Why has that happened? That is a good question.

The Vice-Chairman: Does the member for Dovercourt have any other questions?

Mr. Lupusella: Yes, I have questions to raise. On this particular figure, the supplement pension, is it incorporated, is the amount of money which is paid out through pensions?

Mr. Frame: No, that is related to temporary compensation benefits, not to pension.

Mr. Lupusella: Temporary total?

Mr. Frame: That is right.

Mr. Lupusella: But you said that the amount of a pension exceeded the amount of money paid on a temporary total.

Mr. Frame: Total commitments made to pensions exceeded total commitments paid—

Mr. Chairman: Not for the individual worker.

Mr. Lupusella: It is for one year, or the total?

Mr. Frame: Total commitments in that year.

Mr. Lupusella: For life?

Mr. Sweica: No, in that one year. Just the one year.

Mr. Lupusella: One year.

Mr. Sweica: That is from 1986 to 1987.

Mr. Lupusella: The supplements pension, which is usually paid for with those people co-operating with the rehabilitation department, it is not incorporated in that. It is separate.

Mr. Frame: Not in the pension. That is included under a general heading of temporary compensation.

Mr. Lupusella: I would like to go back to a point which you made before. In the course of your presentation, you stated that at a certain point in time you would like to see a revision of the Workers' Compensation Act by incorporating the employer to be involved in the first week—

Mr. Dolson: At least.

Mr. Lupusella: At least in the first week of the accident. In which way? Are you making particular reference to financial commitment?

~~Mr. Sweica: Yes.~~

~~Mr. Lupusella: You also mentioned the medical aspect, as well as you explain more.~~



~~(Mr. Lupusella)~~

~~...are you making particular reference to financial commitment?~~

1630

Mr. Sweica: Yes.

Mr. Lupusella: But you also mentioned the medical aspect, as well. Can you explain more about that? In which way?

Mr. MacDonell: The employer would continue to pay him his regular rate and he would then go with him to the hospital or do whatever has to be done and stay with him as if he were a employee, instead of saying: "OK, you're injured now. You're on your own. Find your way. Go back to the union or whatever you can do."

But this way, we want to hold them together in more than just a financial bond, but hold them together until the doctor and the employer and the worker decide how they are going to handle the situation, for at least the first week.

Mr. Lupusella: The reason why I am raising this question is that, in the Workers' Compensation Act, the injured worker has the option to choose his own doctor. Do you still maintain that option to be given to the injured worker or would you like the employer, for example, by paying the financial commitment for a week or two, whatever it is going to be, the injured worker would be referred to a doctor chosen by the employers? What is your position?

Mr. MacDonell: In the short range, I do not think we could change the worker's right to choose his own doctor but I think, in the long range, as you think down the road as to how we are going to improve compensation, I think there will have to be special rehabilitation centres in each major city that are staffed with the best equipment, the best diagnostic systems and specialists in the field of rehabilitation, so that injuries that are somewhat more complicated are immediately referred to and treated by professionals who may well be employees of the health system or perhaps, members of the Workers' Compensation Board.

Mr. Lupusella: Are you aware that the Minister of Labour (Mr. Sorbara) is planning to introduce legislation in the near future, maybe this month, dealing with the rehabilitation, along with other items affecting the injured worker? Did you have any discussions with the Minister of Labour?

Mr. Frame: Yes, the summary of some of the recommendations—we have prepared extensive sets of recommendations, both on the Weiler proposal, on proposals for rehabilitation and proposals for reinstatement. We have been talking, on an ongoing basis, with the ministry about all of these general proposals.

Mr. Lupusella: Did you present also the option, which you presented before this committee, to have rehabilitation centres across Ontario with the aim of rehabilitating injured workers?

Mr. Frame: That was part of our proposal when we met originally with the Minna-Majesky task force. We recognized that there was an overdependence

on the Downsview centre, which was one of the major reasons for the long wait. We recognize that clearly, to be effective, to have quick service, you had to have local and regional centres providing that service.

Mr. Lupusella: OK. The final point which I would like to raise is, do you agree or disagree with the board's policy as to whether or not, ??of the time when rehabilitation has to start. The reason why I am raising this question is that ??in your presentation, you explained that the duration of the claim now from 28.3 days had risen to more than 96 days. Now the rehabilitation plays a major role and board decides when rehabilitation has to start. Do you have any clear position when, in fact, the rehabilitation ??

Mr. Frame: I am trying to recall the board policy. I believe there is some commitment in its new policy to do an assessment within, I believe, six months.

Mr. Lupusella: Six months?

Mr. Frame: Yes, it is the feeling of our committee that the sooner that assessment can be made, the better. Our recommendation is for within four weeks, inside of a month, that an assessment be made and, if needed, that the rehabilitation start as soon as needed after that point.

The Vice-Chairman: Are there any other questions or comments? Just if I might, do you have any figures on the types of injuries and the costs related to particular injuries, such as backs as opposed to other types of injuries?

Mr. MacDonnell: Yes, we do, Mr. Chairman, but we did not anticipate that. But I can tell you what they are. We did bring this slide which shows the...

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(Mr. MacDonald)

... ~~the board's figures, but I can tell you what they are. We did bring this slide, which shows the degree of physical impairment compared to the number of injured workers who receive pensions. What this shows, from the board's figures, is that the degree of physical impairment has declined. If you look at construction injuries, a very high percentage of them are back injuries, and you would anticipate then, because of the ageing workforce, that they are probably older workers, but the great bulk, 51 per cent of them, occur to workers under 35 years of age, so backs are a big problem.~~

The other thing we are led to believe from the statistics that have been given to us so far is that most of our injuries are tissue injuries rather than really serious injuries of other types, internal or broken bones and so on. So construction sites are a safer place than they ever were; they are still not as safe as making bread in a bakery probably or making cookies somewhere.

We seem to be having less and less serious accidents, more and more tissue accidents and with younger workers.

The Vice-Chairman: You anticipated one other question I have. The board itself, the representatives of the board, also talked to the committee about the duration of lost time, and they are concerned about its increase. You have referred to the age of the workforce and ageing workforce, but you are indicating that 51 per cent of the back injuries are to younger workers. Do you have any reasons for that? Is that because an older worker might be more experienced and less likely to think he was macho enough to try to lift something he should not lift?

Mr. MacDonald: I do not know the answer to that. One of the things that construction has done is taken the information we have shown you to the Workers' Compensation Board and asked it to give an explanation as to why these costs have soared in the light of reducing accidents, so that we can sit down with our employers to try to stop whatever we are doing or to try to make some sense out of these runaway costs. The Workers' Compensation Board has assigned executives to work on that project, but so far we have not heard back from them, so we do not have those answers.

The Vice-Chairman: In terms of the length of time before getting back to work, are you finding that is related to all across the workforce or is it related to older workers? Is it longer for an older worker to get back work?

Mr. MacDonald: We do not have definitive information. We just do not know whether the age factor has a bearing. We should know when we get our analysis from the Workers' Compensation Board, and we will be glad to share it with you at that time.

The Vice-Chairman: And also if delays in the compensation system are related to the length of time off?

Mr. MacDonald: Yes. We have six or seven reasons for the delays.

The Vice-Chairman: Thank you very much. Mr. McGuigan for one short one, and we have another presentation.

Mr. McGuigan: Some of us met this morning with the auto insurance people. They had almost identical experience. The number of auto accidents is declining, but the personal injury claims are escalating. They have blamed it on sort of attitude, that people are more aware of going the legal route and working the system to their advantage. Is that apparent in any of your work?

Mr. MacDonell: As you know, the idea of an injury is a subjective concept. I have a severe back injury, and I have been working for 50 years. Probably other members in this room suffer from a low-back injury.

Mr. McGuigan: I am one of them.

Mr. MacDonell: You see, some people might feel that you should not work, that you should be on some kind of compensation for that, so it is very hard to know where to draw the line. It is a very subjective thing. Very bad low-back pain may inspire other people to keep working.

~~The only expert on this is it, indeed, has a great deal to do with attitude. One of the back experts who spoke to us about six months ago, one of the world's authorities...~~

1640 follows



(Mr. MacDonald)

1640

The only medical data we have on this is it, indeed, has a great deal to do with attitude. One of the back experts who spoke to us about six months ago, one of the world's authorities, says that staying at home is the worst thing you can do with an injured back. That is probably what you and I have found out.

Mr. McGuigan: Going to my own experience, I certainly kept working, but I found that I had to alternate the type of work I do, spend more time on management and less time on actually doing the physical work. A back pain is irreversible. Up until the day you have a back injury, you think you can lift anything. When you do lift anything and have the back injury, you cannot go back and say, "Well, I won't do that again." You do not have the option because you are never going to do that again.

Mr. MacDonald: To deal with the issue of attitudes, as you can imagine, is very tricky. There are some experts who have made a study of this, in Holland, Denmark and Great Britain, and their conclusion is that the higher the benefit the larger the number of people who will apply for it. What you can take from that I do not know. I think there may be a great deal of truth in as benefits rise, applications for benefits might rise in lock-step with them, and that may be an explanation of what is going on here. That is a very difficult thing to establish.

The Vice-Chairman: You are not suggesting we cut temporary total disability benefits in order to get people back to work?

Mr. MacDonald: Oh, I do not think you could do that.

The Vice-Chairman: I am sure you could not. Thank you very much, gentlemen. We appreciate your presentation.

Mr. McGuigan: Just while we are changing, I read about the graves of American soldiers they discovered in the Niagara region, and they recently sent the remains back to the United States. They noted that those people had as many six vertebrae compressed. An explanation was that carrying the weights they did and the work they did, they had compressed as many as ??six. I could not understand how they could ever carry on.

The Vice-Chairman: It was the same with the habitant, the voyageurs, they used to have the same problem.

Mr. Haggerty: ??not with us. They could not keep up with the rest of them.

Mr. McGuigan: I do not understand how anybody could carry on though. I have got one compressed, and I was a different person after that.

The Vice-Chairman: Our next group is CUPE Local 1750, Sister Carol Haffenden. Do you have any others with you who would like to come forward as well?

Ms. Haffenden: No.

The Vice-Chairman: We appreciate your coming before the committee. Our committee is looking into, as you know, the annual report of the Workers' Compensation Board, and so anything related to the operation of the compensation board is relevant.

Ms. Haffenden, as I understand it, CUPE Local 1750 represents the employees of the Workers' Compensation Board?

Ms. Haffenden: Yes.

The Vice-Chairman: OK. If you would like to proceed with your presentation, then we will hopefully have time for questions from the members afterwards.

CANADIAN UNION OF PUBLIC EMPLOYEES
LOCAL 1750

Ms. Haffenden: I am going to read through the submission, and I will be making some comments on it, as well, as I go through it.

There is just an explanation at the beginning, explaining who we are, representing 2,100 employees of the compensation board...

1645 follows



(Miss Haffenden)

~~and I will be making some comments on it as well as I go through it. There is just an explanation at the beginning explaining who we are representing 2,100 employees of the compensation board employed in technical, medical, clerical and professional positions in 14 work locations and communities throughout the province.~~

The chairman of the compensation board, Dr. Elgie, reported to this committee on May 15—a report which very enthusiastically and very optimistically stated the board's accomplishments and changes in organization and policy as improvements to the service to injured workers.

On the surface, the many activities of the board can appear to be improvements in organizational streamlined efficient; however, Local 1750 does not share the current board administration's enthusiasm. We also submit that the board's optimistic commitment to improved service to injured workers not only lacks substance in its glossy presentation, but contradicts the current trend of the board to downgrade the service. Even more disappointing is the response to date on the part of the Minister of Labour (Mr. Sorbara) and the current government to allow this trend to persist.

The board's haste to show administrative efficiency and downsize administrative costs have already had an effect and will continue to have an effect on the delivery of service to injured workers.

The more frightening but very real possibility is the trend towards the divestment of the board's direct administrative responsibilities through privatization and contracting out of services ultimately resulting in a loss of accountability. The most immediate threat is to the delivery of service in medical and vocational rehabilitation. It is apparent that the underlying motive to shirk direct involvement in service delivery is to be exempt from accountability and criticism. If this is the case, where will the trend stop? And in the process, how many injured workers will fall through the cracks of an internally integrated, externally fragmented service delivery system?

The next section here just deals with our disappointment to date in terms of how the Minister of Labour has responded to giving the board, in his opinion, the exclusive administrative right and not taking the opportunity to intervene.

On subsection 45(5), we view the change in legislation interpretation of subsection 45(5) as a cutback in service.

The method in which the change was brought about is also questionable. It is also a little confusing. It was presented to the compensation board board of directors not for its endorsement or approval but as an administrative change. Simply, it was presented to the board as we now have a proper and legal interpretation of the act and we are going to do it properly from hereon in. We think it is ironic that this board of directors, which was not part of approving this policy, will ultimately in months—who knows how long down the road—have an opportunity to challenge under section 86 any interpretation of the policy of which it played no part in endorsing.


Dr. Elgie stated in his presentation May 25 that subsection 45(5) changes are controversial and misunderstood. The changes are not misunderstood by injured workers who have been disintitled.

The second example I give is injured workers who have been working and receiving the wage loss supplement, have been approached to come off their job and receive a supplement. I should interject here, there is no guarantee that they will get a regular pension supplement because they may not be entitled under the new strategy, under the new interpretation of the policy, and try to find a job where there is no wage loss. There are no guarantees they will get rehabilitation and assistance for a period of a year to try to get them off the wage loss supplement. We know that many workers have been approached to do this, to see if they are interested.

The previous comment about the changes are not misunderstood by injured workers who have been disintitled. The most alarming are the limitations to temporary supplement entitlement placed on seriously and permanently disabled workers whose arbitrarily limited earnings capacity is influenced by the severity of their disability.

I know that other groups have made presentations repeatedly to the minister and also to this committee on subsection 45(5) and perhaps this the most sensitive area when you realize that very seriously disabled workers, as a result of their injury, it is like a double punishment for having the injury. If they have a serious injury and it is deemed that their earning capacity is sufficiently met by the—

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~~As a result of this injury, it is like a double punishment for having the injury. If they have a serious injury, then it is deemed that their earning capacity is sufficient to make the pension, they are not going to be entitled to supplement assistance.~~

1650

We can already foresee it happening in some of the more severe head injury cases or even amputees, that workers will not be entitled because it is deemed that their pension adequately reflects the impairment of earning capacity. Rehabilitation assistance might be available, but there will not be an income because they are not entitled. It is pretty pathetic and being on the side of providing a service directly, many of the rehabilitation personnel find it very awkward. It is very awkward to explain it to a worker and very awkward to try to carry that message and justify it.

The organizational changes at the board. In his presentation May 25, Dr. Elgie's comments on the board's massive reorganization over the past year expresses his gratitude to the board staff for their diligence, forbearance, dedication and interest in improving the operational effectiveness of the organization. Our members have more than a passing interest.

The two major changes--the regionalization of Hamilton, Thunder Bay, Ottawa, Windsor and the expansion of Sudbury and the introduction of the eight integrated service units—I have to say they have at least been fast paced and traumatic.

The board is still in transition on this change, and the diligence and forbearance aside, the major ingredient lacking in the whole process during planning and implementation for the staff, our members included, was information, understanding and sufficient training.

The structure was changed and heralded as innovative. The clients, the employees and the service had to fit the integrated service unit structure as opposed to designing a structure to fit the needs of the service. Many operating areas were unable to provide employees with an understanding and support of the new process because of a lack of understanding from their superiors and management.

We were promised streamlined management in client services and we have seen a phenomenal management growth. Downsizing was a term that we heard a lot during the introduction of the changes. Basically, what it has come to mean is that work processes exist, but they are reduced in number proportionate to the volume or they get eliminated or show up somewhere else in some sort of composite job or another job and again inappropriate staffing.

The regional offices experienced rapid implementation, inadequate training and adjustment. To date, all are experiencing inadequate staffing and are getting no acknowledgement of this need from upper management.

The next section here talks about integrated service units and the problems that we are finding in terms of the delivery of service to injured workers—it is a little confusing and perhaps I could best explain it by a couple of examples.

Ms. Haffenden

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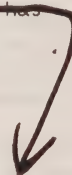
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September 8 was the cut-off date where the board was setting up its first integrated service unit. As of that date, it was going to be employer-based address. You have an employer whose main address is Toronto and they have plants, stores or whatever the situation all over the province. You have regional offices that have already been set up, new regional offices in Hamilton, Ottawa, Thunder Bay, those were the new ones. London and Sudbury already existed. Then you have this massive influx of claims being set up in Toronto because the employer's main address is Toronto or surrounding area.

What would happen is if an injured worker, who had an accident prior to September 8, living in Ottawa, his claim would be handled by Ottawa. The old-fashioned way of by his address and his community, which was Ottawa. After September 8, the claim would be assigned to Toronto based on the employer's address. This created a phenomenal amount of confusion. Perhaps the most delicate area is the claim that has been closed and it has been inactive for a while and the worker is making an inquiry, let's say, in the Ottawa office or through Kitchener or one of the outlying areas, would like his claim reopened. Unbeknownst to him, because his employer was a central address, the claim never left Toronto and it has led to a lot of confusion just trying to get a claim reopened.

You do not have the information let's say readily available on the visual display terminal. A claim could have been microfilmed. Just to get somebody to get the claim reopened and set up and get it initiated and get the appropriate forms sent out and correspondence to the worker, the doctor, etc., takes a phenomenal amount of effort. I mean our members are finding it difficult trying to get this moving and the workers, if they were left on their own to do it, would find it just absolutely horrendous. That has

R-1655 follows



(Miss Haffenden)

~~value of the amount of effort. I mean our members are finding it difficult~~
~~to get this moving and the workers, if they were left on their own~~
~~to do it, would find it just absolutely impossible. That has not resolved.~~

The Vice-Chairman: Excuse me, how does this work in the construction industry where you have union hiring halls, is it down the basis of the union's address or the employer's address or the employers address at the time the worker was injured?

Ms. Haffenden: That I am not sure if if they would use the hiring ?? or the employer. They may be going by the employer address. But even that is confusing because it involves the rate number and I understand there are some hospitals that showed up in the construction unit because of the nature of the rate number.

The Vice-Chairman: I see.

Ms. Haffenden: OK. So I guess they are trying to hold it down and make it very very refined in terms of how you allocate a claim. But this does not have the worker who has been off for four weeks and many times a worker will assume they are off work, their doctor is going to send the report, they will not bother the board right away, they will just wait a couple of weeks and everything will be running smoothly and then they contact the board and they find out nothing has been set up anywhere.

Mr. Chairman: Yes, because I was thinking in terms of the construction industry. You might have a worker that lives in Sault Ste. Marie, his hiring home might be Sudbury, but the company he was working for at the time he was hurt might have an office in Toronto.

Ms. Haffenden: Those situations have come up. I am sure. We had a situation recently. I mean I can probably go on and on giving you examples but just to try to imagine. It is confusing enough for the worker. It is also confusing internally trying to sort out. It seems that a lot of the operating areas are kind of left to, sorted out themselves. Find your own method of figuring it out. Our situation where one worker, I think he had always lived in Ottawa. His employer was—the main address was Sudbury and for some reason the the claim showed up in Windsor. I have no idea how but that is where the claim was and it had to be relocated. But just one other area that is confusing, because there is no relationship between an employer's postal code and anything else with respect to the worker, like a county or his home or even the area code even he area code for telephone enquiries. You have injured workers who have kind of caught in the 416 and 613 territory. They are in between Ottawa and Toronto, some of them the employer address is one of the Toronto ?? but their home number is the 613 area code. They can direct access to Ottawa but they cannot in Toronto where the claim is handled and vice versa has happened. OK. Hopefully that gives a better example of the explanation in terms of the confusion. OK.

Downsview rehabilitation center: On March the 10, 1988, the Compensation Board, board of directors approved a new medical rehabilitation strategy. Under the guiding principles of this strategy the board states that "the expertise and the habilities of the staff of the Downsview rehabilitation centre represents a provincial asset which should be recognized and used in the development and operation of the new system. In their conclusion on the strategy, the board states " The board is committed to the principle that the

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expertise and the experience of the Downsview staff should be utilised fully in the development of any new system of medical rehabilitation for injured workers. The current staff of the D.R.C. will continue to have the opportunity to serve the injured worker community within a new delivery system."

Through further investigation, it has become clear that the board has no intention has no intention of retaining the Downsview rehabilitation center as a part of their service delivery model - a blatant contradiction and an abuse of their stated commitment to the staff at Downsview.

In all of their activities over the past two and one half to three years, the board's response to their administrative responsibility over Downsview is one in which they have not only reneged but have publicly mislead and even milked to their advantage to get rid if the centre. It is frightening to think that any aspect of the services which the board has direct administrative responsibility over if subjected to public criticism could realize the same fate.

The Board has been involved directly in medical rehabilitation since 1932. It started out with a small physiotherapy clinic and they added occupational therapy, remedial gymnastics and even provided accomodation for out of town patients before the centre was even built in 1958. The special clinics were developed to provide services to special groups such as amputees, workers with hand injuries and head injuries as well as the general trauma clinics.

The holistic treatment team approach of providing medical assesment for purposes of treatment planning, as well as medical rehabilitation for the rehabilitation of work injuries became world renown.

The board stated in their medical strategy that the centre initially provided services to injured workers which were not available in the public health care system and that there has been significant improvements in the availability of medical rehabilitation services.

I would just like to make a point here. We, local 1750, have never been opposed to more enhanced regional facilities being available for injured...

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~~and that there has been significant improvements in the area of medical rehabilitation services.~~

1700

~~I would just like to make a point here. We have never been~~
~~opposed to more enhanced regional facilities being available for injured~~
workers because one of the main complaints we realize with the system is the lengthy stay away from home for injured workers, but there may be situations where it makes both medical and economic sense to bring a worker in from an outlying community, for example, if it is going to—I do not want to be naming communities that may have the facilities and I am just not sure of. If a worker lives in Kenora and he needs some really comprehensive medical rehabilitation and the only facility that exists is Thunder Bay, he is going to have to reside in Thunder Bay, possibly an inpatient at a hospital. It would make a lot more sense to be able, if the facilities did not exist in some of the areas, to have a situation such as that, a worker brought into Downsview.

Nowhere has the board acknowledged why the role of Downsview changed from that of providing medical assessments for treatment planning to one which for a select patient group also carried out functional assessments, which were used for the purpose of determining compensation and, in particular, for patients whose recovery appeared to be prolonged. We all know what that is and that is you go to Downsview and if you co-operate, you are seen to be recovered. If you do not co-operate, you are seen to be malingering. Either way, you could stand a very good chance of getting cut off. I think that is one of the main criticisms about the system as it is set up.

In the introduction on its strategy, the board refers to changes in the requirements of the act and the needs and expectations of workers. It is kind of suggestive, but it is not very clear. We suspect that the role shifted in response to amendments to the act in 1974; specifically, the introduction of section 41 wherein full compensation was to continue for a worker who was able to do modified work if the worker "co-operates"—and we all hate that word—medical and vocational rehabilitation. Downsview became utilized for functional assessment purposes to determine entitlement for claims.

Between September 1985 and November 1986, upper management of the board initiated an early admission program at Downsview, which caused admissions to go from the normal 350 to 400 to 750 to 800 patients weekly. This led to intolerable conditions for the patients and the staff and quite possibly triggered public criticism.

The board states in its guiding principles of their medical treatment strategy that, "There should be a separation between the adjudication of workers' claims and the provision of medical rehabilitation services to ensure that the worker's recovery is not compromised by a real or perceived link with decisions regarding entitlement to benefits." Local 1750 submitted very similar comments to the board of directors and suggested a method of severing the assessment process, which would retain not only the expertise of the staff at the centre, but retain the centre itself. The board has not initiated a severing process. It is worth reiterating that the medical rehabilitation at DRC existed for 40 years without the abuse of functional assessment.

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We submitted a very simple process and that is that the treatment team reports compiled at the centre are generally forwarded to the claims adjudicator for direct use in further processing of the claim. In most cases in a clinic in a community, a public facility, if a doctor refers a worker to a public hospital for physiotherapy, the doctor will get feedback from that physiotherapy clinic on which he will base continuing prognosis and diagnosis in reports to the board.

The process that we suggested was very simple. Keep the family doctor as having some driving control or support in the worker's medical rehabilitation, and instead of those reports going directly to the claims department, have them routed to the family doctor for the family doctor to come up with a prognosis and diagnosis in terms of the worker's abilities and the general ongoing treatment. That was suggested and it has not been done.

If the board is not willing to sever the assessment process in house, how can we trust that the board is not simply extending this assessment process into the clinics, which are being set up contractually in the communities.

We believe that the board is merely severing the association with assessment for entitlement by closing DRC, but not by doing away with the process. It has been stated, although not publicly, that the board has a need for assessments for injured workers for not recovering and returning to work within the expected time period. Also, that this type of assessment does not need to be linked with the board, but must be—

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although not publicly, that the board has a need for ~~services for injured workers who are not recovering to work within the expected time period. Also, that this type of assessment does not need to be available to the board.~~ readily available to the board.

In the conclusion of the medical strategy, it states that the board of directors had directed the board's administration to approach the Ministry of Health and other relevant organizations. The board will maintain that in establishing prompt medical care in the communities, that to attempt to impose a priority for treatment of injured workers over the people in the community and the public health care system, it is not feasible. Thus, they will move to contractual arrangements with private health care facilities.

This direction could outwardly be seen to be the best approach to guarantee prompt priority care of injured workers. However, considering the board's reluctance to give up the assessment for benefit entitlement, we view these private contractual arrangements as nothing more than a transferring of the process to the community.

A good example of this is the community group in Sudbury, whose proposal for board funding of a medical rehabilitation program which utilized the co-ordination of existing community facilities was turned down. The board has turned to a private organization for a fee-for-service contractual arrangement, which we understand is more costly.

Now if I can just elaborate on that a little bit. Even before the medical strategy came out, the board was setting up, I guess, what they would call like some soft-tissue clinics. Even those had particular arrangements and that is, there was I guess a contractual arrangement. "We can guarantee you X number of clients. You guarantee us a certain kind of service." Even that was very controlled in that there were communications to these clinics stating that there are medical forms to be completed and also an indication that if you are contacted by the company doctor or the company, you can tell the company that they can expect the worker to be back to work within a said time period. These arrangements were—I cannot think of a good word—very controlled by the board. We see that just extending into the many clinics and the larger facilities if you are doing these contractual arrangements.

In the Sudbury situation, my understanding of the information is that this community group had received funding to do the study, presenting it to the board of directors and they were turned down. I believe for a proposal of \$1 million, they were guaranteeing that they could service 800 to 1,000 injured workers. The whole process has been turned over to a private firm to have this contractual arrangement and it was a fee of \$800,000 for 400 injured workers. It is not as cost effective. There has to be an underlying reason why, if it is more expensive, there is an underlying need.

We submit that DRC can be maintained and utilized in areas of specialization and by internally severing the assessment process providing the type of medical rehabilitation for which it became world renown.

Downsview is part of a community and in the service model proposed could very easily be worked into the model as a centre for specialization, evaluation of medical treatment and of rehabilitation needs, research into work-related injuries and rehabilitation problems, a resource for community

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clinics and consultation and training for health care and rehabilitation professionals. Why should injured workers suffer because the previous administration of the WCB allowed the role of the Downsview to change from rehabilitation to assessment, and the current administration perhaps deliberately allowed it to persist.

The vocational rehabilitation strategy. On April 7, 1988, the Workers' Compensation Board board of directors approved in principle a voc rehab strategy. We suspect that, despite the call for public input on the strategy, that an implementation plan already exists and will be put into effect regardless of submissions with valid criticisms and concerns.

We take exception to the following quote from the strategy:

"The lack of reliable data has hindered the board's examination of vocational rehabilitation in the past. Since no compensation jurisdiction has done a comprehensive monitoring of the effectiveness of vocational rehabilitation, it is therefore difficult to formulate precise prescriptions for improvement to any model of vocational rehabilitation service delivery."

For an organization which has been providing voc rehab to injured workers for over 50 years, it is outrageous that the board can make a statement such as this. It should also not be a licence to do away with a service or administratively divest direct responsibility through contracting out.

This strategy applauds the organization of integrated service units as a means of addressing voc rehab. Here is another situation where the strategy has to fit the structure as opposed to the structure trying to fit the strategy or the service.

~~We have a major concern with the reference to the vocational rehabilitation service. The position of the board is that the vocational rehabilitation service is a core service and should be provided by the board.~~

R-1710 follows

(Miss Haffenden)

1710

We have a major concern with the reference to the staff who would be involved in the rehabilitation service. The position of rehabilitation counsellor is nonexistent, while the position of case worker appears to be the focal point of service delivery. Why has the board done away with rehabilitation counselling? An admission that it does not really want to be involved in the process? There is repeated reference that the other identified functions or staff may or may not be board employees.

This reveals a serious threat that many of the services will be contracted out. The board is moving towards reducing administrative costs and absolving themselves from accountability. The fee-for-service costs could be greatly increased while the multifunctioned, internal-external services would be incredibly fragmented.

This divestment or decentralizing of accountability will not result in fewer complaints. On the contrary, injured workers and their advocates, including members of parliament, will find it even harder to get answers.

The Workers' Compensation Act states that injured workers are entitled to rehabilitation, and one would assume that the compensation board is the doer and the provider of that service. The board, however, appears to be moving away from direct administrative responsibility to administering a referral service.

I think one of the dangers—just before I go to the conclusion too—is that if you have a very extensive fee-for-service arrangement as opposed to direct administration on rehabilitation counselling and other specialization, if the fee for service shows up ultimately under rehabilitation costs, there will be another call for "why are the costs so high" a few years down the road and another study done by an external firm and another reason to possibly downgrade rehabilitation entitlement in the act, just as subsection 45(5) has been affected. I think there is a real fear that the more it is done on a fee-for-service basis as opposed to administration, it will appear that the costs are just soaring and we will have to do something about it. We will have to react in some way. Meanwhile, they are trying to keep the administrative costs down because other people are doing it and the administrative internal costs will appear to be quite efficient.

Our conclusions. Our members can speak from many years of experience and from a deep commitment to providing the best possible service to injured workers and other board clients. We feel very strongly that the current administration of the board has operated irresponsibly, in haste and insensitively as administrators of a service system.

The act originated with a mandate to look after injured workers. The act has been amended many times, but the responsibility of this mandate has remained steadfast.

We hope that this committee, the Minister of Labour and the government, can intervene and exercise their authority over the board to: hold the board accountable and reverse the current trend to the reduction of service delivery; halt the closure of the Downsview Rehabilitation Centre; intervene in the board's process of absolving itself of maximum possible administrative

responsibility for the Workers' Compensation Act, its moral obligations and intent.

Mr. Chairman: Thank you, Miss Haffenden. Sorry. I missed the first part of your presentation.

Miss Haffenden: Do you want me to do it again? No.

Mr. Chairman: Mr. Lupusella has a question.

Mr. Lupusella: I still do not understand very clearly the position of the rehabilitation counsellor, how it was eliminated by the compensation at the time when the provincial government ended the compensation board is announcing rehabilitation across Ontario to work more effectively on behalf of injured workers. Could you please be more specific as to how this position has been eliminated?

Miss Haffenden: It does not show up in the strategy. It only shows up in one capacity—well, two. One is direct and one is kind of an extension. What they have is a case worker, OK, and the case worker is supposed to be involved, according to the strategy, with the early contact with the worker to establish I guess rehabilitation goals and so on, and then the case worker from there will refer the injured worker to the various other individuals whom the case worker feels that the injured worker will benefit from having the service of, but they are not all internal.

One of the first things that could happen is that if an injured worker; if it is felt that perhaps the injured worker could return to their accident employment with some modification to the work site, you get the work site analyst in, but it spells out very specifically in the strategy may or may not be and they seem to be—

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(Ms. Haffenden)

~~their placement employment with some modification to the work site, you get the work site analyst in. But it spells out a strategy. The strategy may or may not be. They are leaning more towards that the work site analyst will not be a board employee. Right now, we have work-site analysts. So it will be some external firm that specializes in work-site analysis.~~

Mr. Lupusella: Is it not true that the Workers' Compensation Board used to refer injured workers to different agencies to get an assessment in relation to the degree of rehabilitation which the injured worker was supposed to get and, at the moment, is doing the same thing?

I have been following different cases, and the system is maintained at the same level. Maybe the category has been changed. Instead of a rehabilitation counsellor, now you would call him or her a case worker. But the function is the same, is it not?

Ms. Haffenden: No, it does not appear to be the same. There are two examples that I know of for sure that the board utilizes, and it is already on a fee-for-service basis, and one is the assessment centres where they assess what you would call workplace tolerances. There are several. There are ??Kosty and several others. Another service that they use externally, and they always have, is the psychological vocational testing. They use external psychologists to do that testing. Those are two examples.

When the board is referring to social rehabilitation counselling, the work-site analysis, even the early pre-vocational counselling, it does not say for sure that it would be a board employee. What you will have is a case worker trying to establish very, very quickly rehabilitation goals in setting up a program and then refer the worker out.

It will be like going from pillar to post to find out the status because you have this worker who has got somebody helping him—he is not quite sure who, whether he works for the board or whether he does not—and this case worker, plus an adjudicator.

You are trying to track down the status of the claim and it appears that they may be co-operating, I suppose, with the social counsellor or the placement specialist, which is the only position that appears to be pretty sound in there. But the thing that is lacking is one of the things that was stressed in the task force report, and we made submissions to the task force as well of a similar notion, and that is the early intervention and the benefit of real comprehensive rehabilitation counselling.

Rehabilitation is not— The worker has gone through a period of disablement and to be entitled to benefits. Then all of a sudden, he has to switch his focus in terms of ability, and this counsellor arrives on the scene. A lot of times workers have to go through, or do go through, a period of adjustment and say: "Yes, I am capable of doing something, but I am not sure sure what. I have been doing the same job for 20 years. To me, my work means that job."

It is very difficult for an individual to accept the fact that he has had a work injury and to accept the effects of that work injury. There is an

immediate fear with respect to finances.

There does not appear to be anybody to carry the worker through that whole process. It will be fragmented, the pre-vocational counselling and social counselling. There does not appear to be anybody to carry the worker through that whole process, that support network, to help him to reach the level where he can say: "Yes, I know what I am capable of doing and I can get a job in this particular area. I may need a little bit of training to assist me." It is a support mechanism that does not appear to be there, doing away with rehabilitation counselling as it exists. It is a fragmented process.

Mr. Lupusella: There now are rehabilitation specialists.

Ms. Haffenden: Yes.

Mr. Lupusella: How different is this position in comparison to the rehabilitation counsellor?

Ms. Haffenden: The rehabilitation specialist deals with the severely disabled. We are talking about the paraplegic, the quadriplegic, and people with head injuries, and not necessarily only a physical head injury but the problem of a person having a real psychological problem with his injury. Especially in cases that were very critical of a worker, for example, who was involved in an accident where his co-worker is killed and he is not, there can be a lot of problems adjusting.

There are about 10 of these specialists and they handle the cases province wide. They have some remarkable success considering the level of disability for paraplegic—

R-1720 follows



Ms. Haffenden:

~~that type of thing so there are about 10 of these specialists and they handle the cases provincewide and they have some remarkable success considering the level of disability for paraplegics, quadraplegics and so on.~~

1720

Mr. Lupusella: I want to know what the measure of ?? that was related to rehabilitation councilor was that he or she was suppose to look after 200 cases related to injured workers which was making the job very very ineffective. I was very critical of the rehabilitation councilor in the past. I think that the new system which is in the process, or has been implemented by the board, at least if I get in touch with that person looking after the injured worker I can relate to the problem of an injured worker in a very effective way through the form. Before there was no way, I mean even to contact the rehabilitation councilor.

Ms. Haffenden: That is because they were on the road and have been in appliance, they were not always in the office. No, you will have a case worker that is basically doing the referral service. But you know what it is like when you call the board and somebody tells you you do not have the doctor's report, so we cannot pay the claim. This is the way I perceive it happening. We do not have the social worker's report or this report.

Mr. Lupusella: There is communication now and before there was no communication. That is the point which I am trying to make. There was no way to deal with a rehabilitation case over the phone. I mean you were suppose to make an appointment. Maybe the rehabilitation councilor was not available at the time. It would take maybe two to three weeks to have an appointment with the injured worker. Now, you can deal with the direct problems through the phone talking to the person looking after rehabilitation. So, as far as I am concerned, it is an advancement, an improvement over the process.

Ms. Haffenden: Is that since the introduction of the integretated service units?

Mr. Lupusella: Yes.

Ms. Haffenden: Ok. Well the counsellors might be more readily available or more—because structurally it is an integration so that they are as well as the ?? as well as the health care benefits and soon and so forth. If they are not on the road then that is where you will find them all in the same place that is if you know the allocation of the claim and who is handling it. So they might be easier to track down in that respect but the process that I am referring to is this new strategy in terms of the case worker being a referral service. So you call the case worker and they have to wait for the report from the various individuals to tell you the real status of the case. So instead of chasing it down internally like you use to have to, you will be trying to chase it down externally. Do you see what I mean?

Mr. Lupusella: Yes.

Ms. Haffenden: OK.

Mr. Lupusella: The other point which I would like to raise. You have been very critical of section 86 which falls under the jurisdiction of Bill

101 which has to do with the board of directors appealing decisions taken by the independent appeal tribunal. You should be aware that under Bill 101 on section 86, the board of directors have the discretionary power to appeal. Would you like to see the law changed?

Ms. Haffenden: I know they have the discretionary power to challenge or call for a review. OK? But the statement that is made. It appears ironic. They have the discretionary power to call of a review on a policy interpretation that they have no part in endorsing. It was just passed off to them as an administrative change. That appears to be a conflict. It is like saying to the board of directors: "You do not need to endorse this because it is just administrative, but in the future, we may call upon you to challenge this administrative change. That is the point that I was just making there on that aspect of it. I am also well aware that there is—When the Chairman made his presentation, there were some comments made or some questions that came up about a low level document that appears to be threatening the—

Mr. Wildman: You were not sure if that was the characterization of the person who had provided it and filled it blank.

Ms. Haffenden: Well, I remember the comments low-level document and there was some ?? about this low-level document and the nature of the document and the very serious treath to 86 and more. I believe it was focussing on even more authority to challenge the ??WCAT decisions.

Mr. Wildman: Could I have a supplementary?

Mr. Chairman: Yes

Mr. Wildman: Is the current interpretation of the law, that is placed on it by the board, not somewhat akin to a situation if you had the Court of Appeal of Ontario make a decision and then have that appeal

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(Mr. Wildman)

~~...that has been placed on it by the board. It is somewhat akin to a situation where, if you had the Appeal Court of Ontario make a decision then had that appealed to the Supreme Court of Canada and the Supreme Court of Canada made a ruling, then that could then be reviewed by the Appeal Court of Ontario. In other words, one level has—~~

Ms. Haffenden: You will have to explain the ??.

Mr. Wildman: One level has made a decision and then it has been appealed to another level, in this case the Workers' Compensation Appeals Tribunal. The board has made a decision and that has then been appealed to WCAT, but instead of it stopping there, the board, the lower level in the sense of the court, has the right to review what WCAT has decided.

Ms. Haffenden: It does seem contradictory. A very simple understanding of the process would be that the board has to modify its policy to the WCAT decisions to some degree instead of calling for reviews of all these decisions.

Mr. Wildman: Also, is there any time limit on how long the board has to review?

Ms. Haffenden: I am not sure of that aspect.

Mr. Wildman: A chronic pain has been waiting for some time.

Ms. Collins: Does your local represent the medical personnel at Downsview?

Ms. Haffenden: With the exception of doctors, yes.

Ms. Collins: I do not know if you can respond to this or not. I cannot find the exact quote from the chiropractors association, but the chiropractors were here the other day and they said that they approached the board of directors of the Workers' Compensation Board and submitted a great deal of evidence that shows that chiropractic services are very useful in rehabilitating injured workers and that the cost of that was lower. They are arguing that chiropractic services should be available in-house at the Downsview clinic.

Somewhere in their submissions, they alleged that they were being blacked, not necessarily at the board level, but at the Downsview ??centre there are certain personnel there who are protecting their own section, if you like, and that is why they are not being used.

Ms. Haffenden: We do have doctors at the centre, not just other medical personnel.

Ms. Collins: Well, I had to say medical personnel because I do not know who they are referring to, and it could be doctors. I do not know if your local has looked at that or is aware of the problem and whether or not you think the service might be useful.

Ms. Haffenden: I cannot really speak medically. I know that it was

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a long time before the chiropractors were recognized by the board, and then when they were the board still has some control in terms of an orthopaedic specialist being able to intervene if chiropractic treatment goes on for an extended period without being resolved. The board still keeps a kind of control over it.

The Downsview rehabilitation centre is not completely autonomous. There are higher medical and administrative authorities over the centre itself and they may be saying that process should not be available at Downsview. I am not exactly sure.

Ms. Collins: Thank you.

Mr. Chairman: Mr. Wildman.

Mr. Wildman: Mr. Chairman, I would be glad to defer to my Tory colleague.

??Mr. Chairman: None here.

Mr. Wildman: In that case, I will go ahead.

In your presentation on section 45.5, you said that the "change in the interpretation of section 45.5 is a cutback in service entitlement," and you questioned the way that change came about. Could you tell us something about how staff at the board were informed of the change and how that process worked, that is, how your members were instructed in the different interpretation of what 45.5 meant?

Ms. Haffenden: OK. I understand that it went through very, very quickly. I think the manual workers were notified before the staff was notified and then it would have about two and a half weeks, I think, after the board of directors endorsed it that they started a training process of, I guess you could call it, "train the trainers." A cross-section of both union and nonunion employees...

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(Ms. Haffenden)

~~They gave some training to a cross section of both union and nonunion~~
employees who had experience dealing with section 45.5 in the past and they were to take it out to their peer groups and provide them with the training. It was for all levels of staff. There were some management people, some union people, some nonunion, and nonmanagement as well, but all had the training and then they just passed the word on that way.

1730

Mr. Wildman: Was a rationale provided for the change?

Ms. Haffenden: Legal interpretation. That was the reason that we were told it was changed. We have now got a legal interpretation. "We have been doing it wrong all these years and we are now going to do it right," was the explanation when we tried to, in many cases, find out why.

Mr. Wildman: Was there no suggestion that there might be an attempt to recover all the moneys that had improperly been paid out at the time?

Ms. Haffenden: No. That was the consistent explanation. It is a legal interpretation of the whole earnings capacity phrase in the act that had been interpreted incorrectly, where workers were getting, say, a 20 per cent pension plus an 80 per cent supplement without any time frames and without any consideration for earnings capacity. It was just the legal terminology, we were told.

Mr. Wildman: Also, could you elaborate on, I think it is the ??second page, at the top at the end of the paragraph. You say, "And in the process how many injured workers will fall through the cracks of an internally integrated, externally fragmented service delivery system?" You have talked a little bit about that. Could you elaborate on what you mean by "internally integrated and externally fragmented delivery system"?

Ms. Haffenden: OK. The internally integrated is the board's reference to its integration of service to ?? internally. It has integrated claims. We have health care in the structure and it is called the plant services and in the integrated service units, it is integrated. In the regional offices, it is still a little bit different, except for Windsor, which still has a claims department, a health care department and a rehab department.

Depending on how Windsor works out, you can expect the other regional offices to be integrated under their regional setting but set up like an integrated service unit. It is just that they are internally integrating their services which, in many respects, it is hard to argue against. I think 20 years ago, which was a little bit before my time at the board, but about 20 years ago a claims section comprised of adjudicators did both claims and health care functions—all of the support, including payment word processing and inquiry—and the only things that were detached were the pension and the rehab.

Then they started carving off departments payment processing, health care benefits and so on, and now they have gone full circle and they have gone back to that. So the integration aspect is not a bad idea. One of the

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fundamental problems with integration right now is the postal code or the application by employer.

The "externally fragmented" reference is to both the medical and vocational rehabilitation being seen to be a good service delivery system but being very fragmented in terms of the worker, instead of going directly to the board for the services, is referred out to medical clinics or vocational rehabilitation personnel who have their own company or social workers. The list goes on and on. That is why the term is "externally fragmented."

Mr. Wildman: Right. Do you have any information with you about the case load that a case worker is expected to handle?

Ms. Haffenden: No. I have no idea.

Mr. Wildman: OK. We had figures given to us by board staff about vocational and medical rehabilitation that indicated that, in terms of vocational, there were some 6,000 referred last year.

Ms. Haffenden: OK. I would not know the exact number. I can give you some case load sizes.

Mr. Wildman: About 3,000 were actually placed. I think those numbers are correct, so it was about half. I would be interested in case load sizes. That would be interesting.

Ms. Haffenden: They vary but the case load sizes are still extremely high. I think that was a submission that we made to the task force. They also made comments with respect to case load size, that in order to properly handle...

R-1735-1 follows.



Ms. Haffenden

~~... case load sizes, and I think that was a submission we made to the board, and they also made comments with respect to case load sizes, that in order to properly handle the rehabilitation of a worker, the case-load size should be limited to have some sort of cap on it.~~

Mr. Wildman: And it does not now?

Ms. Haffenden: No. There is no ceiling.

Mr. Wildman: I have a final question with regard to your conclusion. This refers back to something you said earlier about the position of the Minister of Labour in this process. ??In your submission, Mr. Sorbara has taken the view that administrative decisions of the board are the board's responsibility.

Ms. Haffenden: That is right.

Mr. Wildman: And while he has legislative jurisdiction over the board, he does not get involved in the administration decisions.

Ms. Haffenden: No.

Mr. Wildman: In your conclusion you say: "We hope that this committee, the Minister of Labour and the government can intervene and exercise their authority over the board to" do three things: "hold the board accountable and reverse the current trend to the reduction of service delivery...." At this point, do you think the corporate board is not being held accountable by the government?

Ms. Haffenden: Do you mean the board of directors or the corporate board, the senior administrators of the board?

Mr. Wildman: Both.

Ms. Haffenden: Both? I think the board of directors has to deal with an incredible volume of issues. If you take each one of those lines and expand it to pages and pages of documentation—this is the impression that is given when you read the communiqué; the magnitude of the issues they are dealing with; they have to decide on the money they have to endorse, whatever. Whether it is policy or funding or whatever, I think the board of directors has an incredible amount it has to deal with on a monthly basis. Whether or not they are really given the time or support to make good decisions, I do not know, but it seems like an incredible high volume. But I think the administration of the board is trying very quickly to appear to be administratively very fiscally responsible and show that the spending is not out of control and everything is well within a certain budget and so on, but that is on administrative costs. The costs are going to show up somewhere.

Mr. Wildman: Do you think the thrust of the board's administration towards reducing costs is to cut benefits and cut services rather than increasing rehabilitation and getting workers back to work as soon as possible?

Ms. Haffenden: Yes. They will try to reduce administrative costs from—if they can reduce the entitlement, it is like the same old story of

unemployment insurance: The more unemployed there were, the tighter the legislation became in terms of being able to get the benefit. I think that is the same thing that is happening here, in particular with the 7745(5).

On the administrative side of things, a way to reduce administrative costs is to reduce the number of board people directly involved, and the cost will show up as a fee-for-service cost. So you are scaling down administratively internally but the cost is there. It has to be paid for somehow.

Mr. Wildman: So he would be transferred to welfare or—

Ms. Haffenden: If the workers do not qualify, they will go to welfare. If the workers do qualify, you are talking about a fee-for-service basis. Right now, if a worker goes to Downsview, it is an administrative medical cost. It is not like a cost to a claim. But if they are going fee for service in the community, it is a fee for service showing up on the cost of the claim.

If you have a rehabilitation clinic providing vocational rehabilitation or social counselling, on a fee-for-service basis, somebody else is doing the travelling around, and visiting the injured workers as opposed to your own personnel going out and travelling. That is an administrative cost. It is a fee for service cost. So it look internally that we are very, very cost conscious but the costs are there.

Mr. Wildman: The last question I have is on Downsview rehabilitation. You have talked about the problem of Downsview being that of carrying out an assessment function in terms of eligibility for—

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(Mr. Wildman)

~~regionalized~~ benefits as opposed to rehabilitation. As the regionalization progresses, how do you see that changing? Do your members have any indication of what is going to become of Downsview or whether Downsview is just going to be regionalized or what?

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Ms

~~Ms~~ Haffenden: No. We were convinced that the building will be levelled and the property sold.

Mr. Wildman: Yes, but what I am asking is, will that be regionalized. In other words, would you have rehabilitation centres for the private sector, quote, as opposed to being directly under the administration of the board on a regional basis.

Ms

~~Ms~~ Haffenden: Yes. It looks as if the board is turning to the private clinics to have their regional rehabilitation services available in the community. Senior management went so far recently as to suggest to some of the employees at Downsview: "We can help you find a position in a regional clinic if you like or why do you not even go into your own business?"

Mr. Wildman: And then contract with the board.

Ms

~~Ms~~ Haffenden: Yes. It is very skillfully worded. They will utilize the skills of Downsview, not the facility but the skills. In other words, they will take the process that they do not want to be associated with and transfer it into the community clinics.

Mr. Wildman: Just to play a devil's advocate for a moment, in conclusion, if it is just mainly an assessment function that it has been carrying out or progressively more and more an assessment function, would not the elimination of the operation be a good thing?

Ms

~~Ms~~ Haffenden: No necessarily. No, I should not say, not necessarily; I say absolutely not. The comments are made in here that the facility—maybe not always Downsview, but there was a facility in Malton that existed for a number of years before this assessment process came about, and they were involved in rehabilitation for the purposes of ability not disability.

Mr. Wildman: Yes.

Ms

~~Ms~~ Haffenden: The focus on ability and, ultimately, on return to work, but there was not this, "If you co-operate you will get cut off or not," type of stigma associated with it.

Mr. Wildman: It was a positive medical rehabilitation rather than an enforcement.

Ms

~~Ms~~ Haffenden: Yes. It was a proactive: "Let us see what this worker might be capable of doing, considering not only his physical ability as opposed to limitation but also his educational and vocational background all the time he has been at the centre." So that when they went back into the community, there was some sort of base from which they could work. They could

get further assistance in the community from rehabilitation personnel as well as their own doctors in terms of treatment and they could have a much better sense of what they were doing in terms of their abilities.


It is just that the legislation came in with this aspect of co-operation. Prior to that, there was a point in time in almost every claim when a worker was deemed partially disabled and benefits were reduced, and they had to get the rest of their money from the the unemployment insurance commission.

Mr. Wildman: So the emphasis before 1974 was the partial ability rather than the partial disability.

Ms. Haffenden: Right. That is probably a good way of phrasing it.

Mr. Chairman: Thank you. I must say that in Sudbury there was a flurry of activity around a regional or district rehabilitation centre being set up there, and there was a great deal of sympathy for the argument that WCB should not do its own rehabilitation because of an inherent conflict of interest: As long as the board is doing rehabilitation, there is an incentive to keep the costs down and do assessments as part of rehabilitation. If the rehabilitation is done in the local hospital, which would be the case in Sudbury, at Laurentian Hospital, it is not as though it is privatized, it is a public hospital and there is a rehabilitation centre there, and if the injured worker goes in there, there is no incentive on the part of that doctor to keep the costs down, to do an assessment for cost-saving purposes, and there is this very strong feeling among a lot of people that that worker is better off in that rehabilitation clinic, if you will, than he would be—

(R1745 follows)



...asses ~~and~~ ~~the~~ ~~purpose~~ ~~and~~ ~~there is this very strong feeling~~
~~among a lot of people that worker is better off in that rehab clinic if you~~
~~will, then that worker would be at Downsview rehabilitation centre because~~
there is not that conflict of the Workers' Compensation Board doing its own
cost controls. That is the allure or the enticement of closing out Downsview.
I do not know of anybody else who has pleaded for keeping Downsview open. I
understand your position. That is your job to defend the workers—

Ms. Haffenden: I understood the position was change it, do not
scrap it, and I think that is what the nature of the public outcry was: fix it
but do not get rid of it.

Mr. Chairman: Right, but my question to you would be as long as the
board is doing rehab, can you really change it?

Ms. Haffenden: I will respond with a question. Why is it that it
did it for so many years without it being a problem, for 30 or 40 years;
medical rehabilitation at Downsview? Then when the legislation changed the
board just could not cope with the volume and it became a cost-control
measure. Mentalities—

Mr. Chairman: Go back the other way, yes.

Ms. Haffenden: Right. And use it as a regional facility, just like
you might in Sudbury. There is plenty of need and demand for a regional
facility located in that area of Metropolitan Toronto, plus the specialization
that exists. I made a comment earlier. I think you missed that comment where I
talked about it making economic and medical sense. If you have a worker who is
stuck in Kenora and it is going to cost thousands of dollars to send him to
Thunder Bay to stay in a hospital to have physio-occupational therapy, it
might make more sense for him to go to Downsview for a few weeks because he is
going to be away from home anyway.

Another area, too, is that there are areas of specialization in severe
head injuries. I have heard it said, maybe there are not many doctors who will
stand up and make the statement, that there are not a lot of good facilities
here in the province. There are some severe head injuries that end up at a
special clinic in the United States, which is very costly; about \$1,000 a day.

Mr. Wildman: There is one in Calgary.

Ms. Haffenden: OK. And there is a lack of. The board treats over
250 neurology cases a year at Downsview. Even if the facility was expanded in
areas of specialization to handle more of the special circumstances, it would
be much more cost effective than sending injured workers to Calgary or to the
United States. They are going to be away from home anyway if they are going to
Calgary or the United States, so that distance is a problem but is not as much
of a problem. It is an area that I guess they have never considered expanding
on.

Mr. McGuigan: I would like to point out the government has announced
a number of beds for head injury people; not a large number, 20, 30 or
something. I just do not know where they are either, but it is ?? for the
province and in Hamilton, I guess ??

Ms. Collins: I think it was ??McMaster.

Mr. Chairman: Miss Haffenden, thank you very much for appearing before the committee and giving us the views of the people who are very directly in touch with injured workers. Just before Ms. Collins leaves, not to single her out, of course, on Wednesday we are having the WCB come back before the committee. You may recall that was requested. It has been a month since it was here before and there has been a lot of water under the bridge since then. Merike, our research person, has been keeping track of the specific problems and the questions that people had of the board. We do not want to preempt the role of the committee members, obviously, but would the committee accept a number of questions coming from Merike, because there it will be orderly, by category and I think we are less apt to miss some of the major issues that were raised?

Mr. Miller: Excellent idea.

Mr. Chairman: OK. So we could do that on Wednesday. We will not take up all the time because members should have a chance, but I think that would be a good idea because if we are going to write a report, we want to make sure that our points are well taken.

The committee adjourned at 5:50 p.m.



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STANDING COMMITTEE ON RESOURCES DEVELOPMENT

ANNUAL REPORT, WORKERS' COMPENSATION BOARD, 1986

WEDNESDAY, JUNE 15, 1988

Draft Transcript

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

CHAIRMAN: Laughren, Floyd (Nickel Belt NDP)

VICE-CHAIRMAN: Wildman, Bud (Algoma NDP)

Brown, Michael A. (Algoma-Manitoulin L)

Collins, Shirley (Wentworth East L)

Grier, Ruth A. (Etobicoke-Lakeshore NDP)

Leone, Laureano (Downsview L)

Marland, Margaret (Mississauga South PC)

McGuigan, James F. (Essex-Kent L)

Miclash, Frank (Kenora L)

Miller, Gordon I. (Norfolk L)

Wiseman, Douglas J. (Lanark-Renfrew PC)

Substitution:

Kanter, Ron (St. Andrew-St. Patrick L) for Mr. Leone

Clerk: Decker, Todd

Staff:

Madisso, Merike, Research Officer, Legislative Research Service

Witnesses:

From the Workers' Compensation Board:

Elgie, Dr. Robert G., Chairman

Kaegi, Dr. Elizabeth, Vice-President, Policy and Special Services

McDonald, Henry, Director, Policy Development

Wolfson, Dr. Alan G., Vice-Chairman of Administration and President

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Wednesday, June 15, 1988

The committee met at 3:37 p.m. in room 151.

1986 ANNUAL REPORT OF THE WORKERS' COMPENSATION BOARD
(continued)

Mr. Chairman: The resources development committee will come to order. This is the last day of our hearings on the Workers' Compensation Board. We have heard from all the interest groups, and now we are going to hear a rebuttal—perhaps that is the wrong way of putting it.

The chairman of the Workers' Compensation Board, Dr. Elgie, has been following the hearings, I assume, because he has some answers to some of the questions that have been raised. I will turn the meeting over to Dr. Elgie, and then, when he is finished—Merike Madisso, our research person, is keeping track of the questions because Merike had some that we were going to ask of Dr. Elgie anyway—we will see which ones of those Dr. Elgie is able to answer.

Dr. Elgie: It is hardly a rebuttal. I have been up in Nickel Belt for the past two days with the Nickel Belt debating society. You may know them. They meet annually.

Mr. Chairman: It is a bit scary actually.

Dr. Elgie: You have avoided that.

Mr. Chairman: Yes.

Dr. Elgie: On May 25, I presented a statement to the members of this committee regarding recent initiatives within the Workers' Compensation Board, and on that date members of the committee posed a number of important questions relating to this statement and voiced other concerns.

As a result of these discussions, I felt it appropriate to make a follow-up statement in which the points raised could be addressed. In addition, staff from the Workers' Compensation Board have had the opportunity to sit in ~~on the continuing sessions of the committee in which other workers' compensation groups have made presentations. During these sessions, a number of further questions were raised. I have also felt it appropriate to address these matters in a response.~~

~~Finally, during these sessions, several inaccuracies regarding the policies and practices of the board were placed on the record, and if I may, I would like to clarify some of those points.~~

~~Let me then proceed to respond to the questions which were posed earlier. During the May 25 session of the standing committee, the Leader of the Opposition (Mr. R. Rae) raised several inquiries relating generally to the subject of compensation for occupational diseases; in particular, he sought responses to certain questions regarding the compensation of goldminers who had developed occupational cancer.~~

↓ (1540 follows)

(Dr. Elgie)

on the remaining sessions of the committee in which other worker's compensation groups have made presentations. During these sessions a number of further questions were raised. I have also felt it appropriate to address these matters in a response. Finally, during these sessions, several inaccuracies regarding the policies and practices of the board were placed on the record and if I may I would like to clarify some of those points.

1540

Let me then proceed to respond to the questions which were posed by their dependants or by members of the Legislature or by the relevant trade unions. The board, on its own initiative, established a number of claims by matching the board's records and gold miners with mortality statistics maintained by Statistics Canada. To date, 190 of the 475 claims have been allowed. I should indicate however that in 80 of those 190 cases, to date no living dependent has been found. An additional 90 cases have been denied with decisions pending in a further 195 cases. Decisions in all these remaining cases are expected to be made by the end of July 1988. Members may be interested in knowing that the average benefits paid on a successful claim to date have run in the neighbourhood of \$130,000.

The leader of the Opposition next asked about the board's policy with respect to compensation for stomach cancer in gold miners. I wish to advise the committee that on August 18, 1986, the board wrote to the industrial disease standard'a panel to request advice on the probable connection between work in gold mines and the incidents of stomach cancer. On April 15, 1987, the panel advised the board that it did not find a probable connection between stomach cancer and occupational groups within the Ontario gold mining industry.

The panel based its conclusion on a number of factors which I believe are important to summarize. First, the panel found that the statistical evidence from other jurisdiction did not support a causal connection between exposure and disease. More specifically it appears that only one study has revealed a significantly elevated risk of stomach cancer in gold miners. Several studies on the other hand reviewed by the panel have shown actual reductions in the rate of stomach cancer.

Second, the panel found that the elevated risk of stomach cancer in gold miners did not appear to be causally related to occupation. They determined that the Ontario findings did not satisfy the key test of causality, in that one could not establish a dose-response relationship between exposure and stomach cancer. If gold mining had been the cause of the cancer then increased exposure should have lead to an increased risk of stomach cancer while in fact the panel found it exactly the opposite trend. That is the risk of stomach cancer declined as gold mining exposure increased.

Despite these findings, the board acknowledges that more research must be carried out on this issue. In this respect, in conjunction with the Ministry of Labour and the Atomic Energy Board of Canada, are funding a follow-up research to the Ontario miner's mortality study which will further investigate this possible connection. The results of this study are expected in 1990.

With respect to specific compensation statistics, to date the board has received eight claims on behalf of gold miners for stomach cancer. But as I

say in the absence of sufficient evidence to confirm a relationship, the board is not in a position to accept these claims.

The leader of the Opposition then dealt with a much broader question, the question of the undercompensation of workers who have suffered occupational diseases. During the May 25 session of the committee, he made reference to a report prepared by Dr. Yassi where it is estimated that 6,000 deaths occur annually in Ontario which are attributable to occupational diseases.

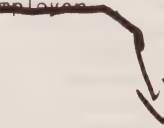
Before addressing this important point, I should indicate that there exists a difference of opinion in the scientific community with respect to whether the estimate provided by Dr. Yassi is accurate. In her report, she indicates that the percentage of cancers occurring in the province with an occupational connection falls within the range of 15 to 25 percent. On the other hand, professors Doll and Peto, in studies that have been more widely accepted, have concluded that occupational cancers will typically represent 5 percent of all cancers in an industrialized society.

Irrespective of which estimates is thought to be correct, I recognize, as the board does, that there exist a significant undercompensation of workers who have developed occupational cancers and other work related diseases. The board believes that this undercompensation arises for several reasons.

First the worker, the employer and the treating physicians may fail to recognize a particular condition as having an occupational cause or origin. This may occur because the relationship between exposure and outcome is still unclear. Secondly, the period between first exposure and the development of occupational disease known as the latency period is typically very lengthy making recognition of the linkage very difficult. Finally, some cancers that are recognized as occupationally induced may also unfortunately be caused by non-workplaced factors, again creating difficulty in establishing that work related causal relationship.

In order to address the problems associated with identification of occupational diseases, the board has from time to time undertaken outreach programs in which physicians and employees

(R-1540-1 follows)



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(Dr. Elgie)

~~known as the latency period, is typically very lengthy, making recognition of the linkage very difficult. Finally, some cancers that are recognized as occupationally induced may also unfortunately be caused by nonworkplace factors, again creating difficulty in establishing that work-related causal relationships.~~

~~In order to address the problems associated with the identification of occupational diseases, the board has, from time to time, undertaken outreach programs, in which physicians and employers have been asked to consider the potential contribution of occupational exposures when a disease is diagnosed. For example, a number of asbestos claims were established after employers reviewed their workers' medical and personnel records. In situations where the WCB has adequate occupational disease data, as it did in the case of gold miners where, approximately an eight-year study had been carried out, the board has actively sought out potential claimants by cross-checking the board's data with that provided by Statistics Canada. The initiatives hopefully being undertaken by the various medical faculties in Ontario universities should also help to heighten awareness within the medical community about the relationship between occupational exposures and disease.~~

Undercompensation may also occur because the medical and scientific communities, or segments thereof, do not recognize the connection between workplace exposures and an occupational disease. In such situations, the board must make a very difficult judgement as to whether a reasonable connection exists.

In this respect, I should point out that the board has recently established a new occupational disease department and has strengthened its resources through the hiring of additional scientific and technical personnel. This initiative provides board staff with the necessary resources to evaluate issues of medical causation. This approach should also address Mr. Di Santo's concern that the treatment of occupational diseases within the board has historically lacked a sufficient focus.

As honourable members will know, the board also receives advice on occupational diseases from the industrial disease standards panel. Under section 86(p) of the Workers' Compensation Act, the panel is empowered to investigate the possible relationship between exposures and industrial diseases and to advise the board accordingly. The board hopes that increased knowledge on the part of workers, employers and the medical community about the issues surrounding occupational disease and the increased expertise available regarding these process of adjudication will lead to a greater proportion of legitimate occupational diseases being compensated.

During the committee meeting of May 25 as well, the Leader of the Opposition and the member for Algoma (Mr. Wildman) posed a number of questions relating to the board's new approach for interpreting subsection 45(5) of the Workers' Compensation Act. As members will know, this is the legislative provision which empowers the board to pay temporary supplements to workers in receipt of permanent disability pensions who are participating in medical or vocational rehabilitation programs.

The Leader of the Opposition asked for statistics on the number of supplements which had been granted since the date of enactment of the policy, November 9, 1987, when compared to a period prior to that date. I expect that

the honourable member's concern flows from a perception that the new interpretation of the threshold test in subsection 45(5) is more stringent than the previous interpretation.

This view, in turn, would lead to the inference that a large number of workers are being denied entitlement to temporary supplements. For the benefit of members, the threshold test set out in the statute specifies that a worker may only be entitled to a supplement where his or her impairment of earning capacity is significantly greater than is usual for the nature and degree of the injury.

I should indicate that the new policy on temporary supplements not only revised the interpretation of the threshold test, but refocused attention on the link between the provision of such temporary supplements and vocational rehabilitation.

~~Board administrators concluded that there was a need to revise the interpretation given to this threshold test to bring it into conformity with the law. It was thought, however, that the practical impact would not result in fewer supplements being awarded. This belief, at least to date, as we shall see, is borne out by the statistical information I am presenting here.~~

~~For the first four months in 1988~~

R-1550 follows

(Dr. Elgie)

1550

Board administrators concluded that there was a need to revise the interpretation given to this threshold test to bring it into conformity with the law. It was thought, however, that the practical impact would not result in fewer supplements being awarded. This belief, at least to date, as we shall see, is borne out by the statistical information I am presenting here.

For the first four months in 1988, the number of full supplements and wage-loss top-up supplements granted to injured workers total 1,671. for the comparable period in 1987, the figure was 1,472. In percentage terms then, for the four-month period in 1988, full supplements and wage supplements were awarded with respect to 53 per cent of all pensions, which were issued by the board, compared with the 38-per-cent figure reported for the comparable period in 1987.

During the May 25 meeting, Mr. Wildman also noted that in early 1988 the board decided to grandfather benefits to workers who had been in receipt of supplements prior to November 9, 1987, under the older policy. Mr. Wildman indicated that this approach was inequitable since two categories of workers were being treated differently. In responding to this point, I should indicate that the rationale underlying this decision was consistent with the board's general policy on retroactivity and very much reflected considerations of equity.

In making this determination, the board recognized that there were workers who had been in receipt of supplements prior to November 9, 1987, who might not have completed vocational rehabilitation programs under the former policy. As a result, an addendum to the revised policy was introduced. This addendum specified that when the files of these workers were reviewed in the usual way, the adjudicator should consider whether or not the individuals had already received, or had been offered, vocational rehabilitation programs, which would aid them in returning to suitable employment. If the answer to that question was no, then there would be a requirement for a vocational rehabilitation program to be offered to the worker. Since workers in this category were already in receipt of supplementary benefits under the previous policy, they were presumed to have met the threshold requirements of the revised policy.

From the analysis and the statistics presented, it is clear that the perception apparently held by some members of the injured worker community that the objective of the new supplements policy was to reduce the level of benefits paid to injured workers is inaccurate. You may be interested to note that the issue of supplements was recently discussed at the June 3 meeting of the board of directors. During that session, material relative to the subject was circulated to all members of the board of directors. So as to maximize the understanding of this issue among committee members, I am having circulated the material that was presented at that meeting to members of this committee with the concurrence of the members of the board of directors.

The next set of questions raised by committee members related to the work of the board's vocational rehabilitation counsellors. First, Mr. Rae asked for information on the average case load carried by a counsellor. I am pleased to provide that information.

Dr. Elgie

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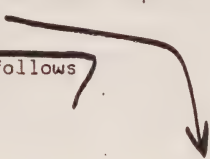
In the 1987 calendar year, the average case load carried by a vocational rehabilitation counsellor was 88 files. Based on the statistics available for the first five months of 1988, the average has fallen slightly to 86. The comparable averages for the years 1983 through 1986 are 65, 64, 71 and 75.

The board believes, however, that the average case load is only one of a number of factors which must be considered in assessing the effectiveness and productivity of counsellors. Other factors of importance are the type of cases being carried, the geographic distribution of those receiving services and the follow-up schedule for the cases.

I would like to mention that the new proposed vocational rehabilitation strategy recently announced by the board will provide us with an opportunity to address our current methods of delivery of service, and it is our hope that the implementation of this strategy may relieve some of the pressure caused by current case loads.

Mr. Miller was good enough to ask for the number of injured workers whom the board had placed in employment positions in 1987 and in previous years. I am pleased to advise him and the committee that in 1987 suitable employment was found for 5,229 workers or approximately 48 per cent of the vocational rehabilitation case load. These totals have been climbing consistently since 1983. The exact comparative figures for re-employed workers for the preceding years...

R-1555 follows



June 15, 1988

(Dr. Elgie)

~~These totals have been climbing since 1983. The exact comparative figures for~~
~~the employed workers for the preceding year~~ are as follows: 1983, 3,188; 1984,
3,714; 1985, 4,874; and 1986, 5,151. The figures available to date allow us to
project that in 1988 an estimated 5,500 injured workers should obtain
employment, and if that comes to fruition, that would be an increase of five
per cent over 1987.

The next question raised by committee members concerns the review being
carried out by the board of directors of a series of Workers' Compensation
Appeals Tribunal chronic pain decisions under section 86n of the Workers'
Compensation Act. In particular, the Leader of the Opposition wished to know
when the board of directors might render its decision on the outstanding
cases. Since this is an extremely complex issue, I would like to take a few
moments to sketch the history of the subject.

The first four appeal tribunal decisions, which raised these issues,
were considered by the board of directors during its December 1987 meeting. At
that time, board members decided that the undertaking of a section 86n review
of the issues of general law and policy raised in these decisions should not
take place until the appeals tribunal rendered its addendum to decision 915.
In this addendum, the appeals tribunal considered the issue of retroactivity
in the context of chronic pain decisions. This latter issue may be stated as
follows: Once a decision has been made to pay benefits for a newly identified
medical condition, at what point in the past really should these benefits
commence? The board of directors agreed that it would be essential to consider
the appeals tribunal's reasoning on this matter during the course of a section
86n review. The same position was taken by board members when they considered
the other 16 appeals tribunal decisions.

As honourable members may know, the appeals tribunal held a hearing on
the retractority issue in October 1987 and rendered the addendum to decision
915 on May 5, 1988. That decision provided a lengthy and complex analysis of
the retroactivity issue and ultimately took a position different from that
expounded by the board of directors in its policy on chronic pain disorder
established July 3, 1987, and on its policy on retroactivity established
October 2, 1987. The appeals tribunal decision was considered by the board of
directors on June 3, 1988, and they decided to initiate a section 86n review
involving issues of general law and policy in all of those 20 WCAT decisions.
Each of these cases dealt with the subject of chronic pain and with the
retroactivity issue with respect to benefit payments. The adjudicative
approach taken by the appeals tribunal directly contradicted components of the
chronic pain disorder and retroactivity policies very recently enacted by the
board of directors.

Now that the addendum has been rendered, the board will be contacting
the parties involved and finalizing the issues to be considered at the section
86n review. It is the intention of the board of directors to have this
exercise carried out as soon as possible, although the actual date will have
to take into account the schedules of the participants and the complicated
issues to be considered. While there is every desire to expedite the process,
it is essential, in the board's view, to provide time frames, which are fair
to the parties.

When the board exercises its discretion under section 86n of the
Workers' Compensation Act to review decisions of the appeals tribunal, the

Dr. Elgie

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different roles of the tribunal and the board are put into sharp relief. In the tribunal's second annual report, a copy of which was provided to the committee, Mr. Ellis comments that, in his view, the board's position is that except where a section 86n review is initiated, the board will generally consider itself obliged to adopt the position of the tribunal as indicated in the decisions rendered.

I believe it is important for the board to place on the record its position with respect to this issue—

R-1600 follows



(Dr. Elgie)

~~with respect to this issue~~

First, it is important to realize that the tribunal panels themselves do not necessarily consider that they are bound by decisions which have been rendered by other panels. The board shares this position, but for somewhat different reasons. First, the appeals tribunal may render decisions without the input or even the participation of the board. As a result, the board's position on important issues may not have been fully canvassed or appreciated when a tribunal decision is rendered. For the board to apply such decisions to all subsequent claims without this type of input or analysis would be inappropriate. Secondly, an individual decision produced by the tribunal may mark only the beginning of a line of decisions of policy which will eventually evolve. Thus the position taken by a tribunal at one particular point in time may be reversed several weeks or months down the road. The board must have regard for hundreds of thousands of claim files. Thus there is a need to ensure that the state of the law regarding specific issues is sufficiently settled before the board can responsibly adopt a position expounded by the tribunal.

1600

Third, in rendering its individual decisions, the tribunal may not be fully aware of either the administrative or the cost implications of significant decisions. These are issues of vital importance for the system and must be fully canvassed before a new policy approach can be adopted.

There are two ways in which the board can react to particular appeals tribunal decisions which raise broader policy issues. First, the board, after considering the matter, may implement a specific decision even though concerns exist about the implications of that ruling, and this happens fairly frequently. In these cases, the board will advise the tribunal of its concerns and ask for the opportunity to make submissions on the issue with respect to any future cases which may be heard. As well, the policy issues raised by the appeal tribunal decision may be referred to the board's operational policy department where these positions are not consistent with the traditional board approach. In this fashion, both the old policy and the interpretation contained in the tribunal decision can be compared in a systematic way.

I should indicate that this approach, which I consider to be very constructive, has already led to certain policy changes within the Workers' Compensation Board.

Second, the board may undertake a review of the issues of policy and general law contained in these decisions pursuant to section 86n of the Workers' Compensation Act. This route, I should add, has been followed but only very rarely.

A further point raised during the May 25, 1988, session involves the issue of the board's responsibility for the medical rehabilitation of workers and, in particular, the status of the Downsview rehabilitation centre. It would be helpful for me to begin my discussion of these issues with a short review of the development of the board's new medical rehabilitation strategy.

As some members may know, the board has been involved in medical rehabilitation since 1932. From 1958 onwards, the organization has operated a rehabilitation centre on its Downsview site. Over the past decade,

improvements in medical rehab and changes in the system of workers' compensation have required the board to review its rehab programs for injured workers. In this respect, a number of advances in technology and in administrative procedures at Downsview were introduced in the early 1980s.

In the midst of these initiatives and other reviews, the centre became the focus of media attention, which led to a number of additional investigations and reviews. One of these inquiries was carried out by the Downsview review team, which was established by the former Minister of Labour in December 1986.

In late 1987 and early 1988, the WCB developed a new medical rehabilitation strategy, which reflects advances occurring in this area. This initiative represents not only a positive response to the concerns raised by the Downsview review team and by others but goes beyond the recommendations made in these documents. In March 1988, the board of directors reviewed this proposed strategy and instructed board administrators to prepare a report on the feasibility of such an initiative.

1605 follows



(Dr. Elgie)

... In March 1988, the board of directors reviewed this proposed strategy and instructed board administrators to prepare a report on the feasibility of such an initiative. This revised document will be presented to the board of directors in the fall.

In the meantime, Workers' Compensation Board officials are undertaking discussions with the Ministry of Health and the Ministry of Labour, as well as with other relevant organizations. One key item under review involves the future of the Downsview rehabilitation centre. Since the new strategy embraces the principle that adjudication and medical rehab functions should be separated, the long-term future of the Downsview facility remains undetermined. I should stress, however, that no decision has yet been made about the future of that institution. Such a determination remains to be made by the board of directors, but there should be no question that the centre itself, and particularly the conscientious work of its staff, have contributed significantly to the rehabilitation of thousands of injured workers. It is the expectation of the board that the commitment and expertise of Downsview staff will assist greatly in the implementation of the board's new medical rehabilitation strategy.

Among the other principles which guided us in the formulation of this strategy was the need to provide high-quality medical services which are well co-ordinated with other health service delivery mechanisms available in the province. There was a consensus that such services should be delivered as close as possible to the injured workers' homes. Finally, the rehabilitation must be available on a timely basis to minimize the periods of disability and disruption in the lives of workers with job-related injuries.

During the May 25 session again, the Leader of the Opposition (Mr. B. Rae) commented that he would very much like to see the board's occupational rehab mandate extended into the community and, in particular, to the universities. In my previous response to the honourable member, I commented on some progress which had been in disseminating the principles of occupational medicine into the universities, and I would like to supplement those comments with a brief review of how the board's proposed medical rehab strategy would facilitate the goals that the Leader of the Opposition and I agree are significant.

The board's new strategy calls for a three-tiered approach to the delivery of medical rehab. On the first level, community-based clinics would be established to provide advanced and intensive paramedical rehabilitation services, for example, physiotherapy, occupational therapy and social work. These clinics would supplement the medical treatment already provided by the injured workers' own physicians.

The second level would consist of regional evaluation centres linked to local universities. These centres would focus on cases in which medical recovery is prolonged or where the return to work is difficult. The centres would provide injured workers with comprehensive and multidisciplinary evaluations designed to confirm that the diagnoses are complete and that treatment strategies developed are appropriate. In addition, the evaluations would estimate the worker's future progress to recovery and would document the individual's present functional capacities. These regional evaluation centres might also participate in research and provide training opportunities for

Dr. Elgie

rehabilitation professionals in the area.

On the third level, a medical rehabilitation institute would be established and linked to a major university-affiliated teaching hospital. The primary focus of such an institute would be to conduct and co-ordinate epidemiological research into work-related injuries and rehabilitation problems. In addition, the institute would also develop quality control programs for services provided in community clinics and in the regional evaluation centres.

While on the subject of Downsview, I would like to raise a related point. On June 1, Mr. Di Santo alluded to a decision of the board to close the claims counselling service at the centre. Mr. Di Santo is correct that the functions of the claims counselling service have been passed on to the integrated service units and to the regional offices.

Though this claims adjudication function was originally introduced in an effort to enhance the services provided to injured workers, the perception has gradually emerged that the connection between claims adjudication and medical rehab services has compromised the independence of the medical advice being provided.

As I have indicated, one of the principles which guided the development of the medical rehab strategy was that the WCB's adjudication function should clearly be separated from medical rehabilitation services to avoid this sort of perception from arising.

~~The board is confident that questions originating from workers~~

1610 follows

~~tion should clearly be separated from medical rehabilitation services to avoid this sort of perception from arising.~~

1610

The board is confident that questions originating from workers at the centre will continue to be answered quickly and effectively be designated personnel in the integrated service units, and in the regional offices. In addition, if injured workers receiving treatment at Downsview have concerns or complaints about their stay, they can continue to address these to the patient liaison counsellor at the centre.

Next, the Leader of the Opposition raised the important issue of worker participation in the province's safety associations with respect, particularly, to the Industrial Accident Prevention Association. Specifically he wished to know whether there are any plans in the works for some revision with respect to worker participation on these groups. As committee members may be aware, the safety associations, of which there are nine, are established pursuant to section 123 of the Workers' Compensation Act. The wording of this legislative provision clearly envisages that the associations will represent the interests of employers in various industries across the province. I am, however, pleased to report that there is a considerable movement towards increased labour participation in these bodies.

Let me first turn my attention to the IAPA. Recently the size of the board of directors in this organization was reduced significantly. Of the present 75 members, 25 are to be elected at large and to include constituencies other than employers. This will certainly provide an opportunity for labour representation. Similarly, the Mines Accident Prevention Association has recently amended its bylaws with respect to the number of nonemployer members on the board of directors. In 1987, two of 15 director positions were designated for representatives of labour. In 1988 the board has been increased to 20 members. It is the intention of the association to invite five labour officials and two members of the general public to join its board.

The Construction Safety Association of Ontario presently has a board of directors composed of 100 members. Of this total, 15 are designated as representatives of labour or the general public. Similarly, of the 22 members on the board of directors of the Transportation Safety Association of Ontario, three are to be representative of labour.

In 1986 discussions took place between the electrical utilities safety association, the Canadian Union of Public Employees and the International Brotherhood of Electrical Workers, regarding labour participation on the board of directors of this group. Although these discussions were not immediately fruitful, there presently exists a tripartite committee, chaired by the general manager of the safety association, which has been operating effectively since 1977. This body is composed of four representatives each of labour and management, along with representation from the Ministry of Labour. It meets every two months to discuss issues relevant to health and safety in the utilities sector.

I should also point out that the Forest Products Accident Prevention Association has adopted a tripartite program for the development of a retraining program for workers in the logging industry. Finally, I would note

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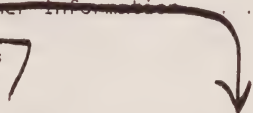
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that a committee composed of officials from the Health Care Occupational Health and Safety Association, and representatives of major unions in the health care field, have met periodically over the last 18 months to develop guidelines for consideration by joint health and safety committee in health care institutions.

As will be evident from these comments, there has been gradual progress made in increasing the amount of labour participation in safety education. As I am sure all members will agree, it is desirable for labour and management to work collectively in the development of occupational health and safety training programs. In this respect, the board is actively encouraging further measures on the part of the safety association to increase the level of labour participation in the governance of these bodies, as well as in the design and delivery of health and safety education programs.

Finally, Bob Rae and Mr. Wildman inquired about the status of a claim file involving a 63-year-old individual who had been exposed to lead dust at Toronto Refineries and Smelter. I have asked my officials to review this claim and this process is now under way. I wish to report to committee members, however, that the worker has advised his vocational rehabilitation counsellor that he had obtained employment in a construction-related job to commence June 7, 1988. ~~Further information~~

1615-1 follows



(Dr. Elgie)

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When further information is available, I will forward it to your committee.

As members will recall, board officials discussed certain aspects of this case before the committee on May 30. At that time Mr. Wildman, in particular, raised concerns that the present board policies relating to the compensation of injured workers who had been exposed to substances designated by regulation, may need to be reviewed. After having read the discussions on this issue, I agreed that the board should review its present policies to determine whether revisions are required, and I can report that this process is, in fact, under way.

I would now like to deal with some of the questions which were raised by the groups which made presentations to the standing committee. In addition, it would be opportune to comment on certain inaccuracies which my officials have identified in the statements made by certain members of the groups. I would like to deal first with the issues raised by the office of the worker adviser. On June 2, Mr. Di Santo commented on the length of time that it took to obtain responses to inquiries. This is an important point which I would like to address. As committee members will appreciate, the implementation of the integrated services units within the board was a massive exercise. The former claims adjudication branch was completely restructured, which resulted in a series of significant administrative challenges. Obviously, the flow of files was a priority which had to be addressed.

In order to deal with this issue, board officials, on a priority basis, identified all active files within head office. These files were, in turn, allocated to the appropriate integrated service unit and to the new regional offices where applicable. Because of manpower and time constraints, however, many inactive claim files were not allocated in this fashion. As a result, when inquiries arise pertaining to these files, such as in cases of recurrences, it will typically take the organization longer to locate the files at this time than to deal with the inquiry. I expect that this situation will be temporary in nature, and that all inactive claims will be properly allocated, according to ISUs, by the end of the year.

Another difficulty which the organization faced involved a backlog of mail which accumulated while the ISUs were being organized. I am pleased to report that significant progress has been made in reducing this backlog. As many members will recall, one major objective in establishing integrated service units, was to decentralize client services within the board. It is expected, in this respect, that workers who deal with a particular ISU will obtain far easier access to their claim files. I fully expect this objective to be realized once the growing pains associated with the integrated units have been resolved.

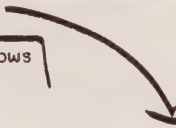
At this stage I would simply like to draw to the attention of members of the committee the magnitude of the challenge that the board faces. At any given point in time there exists approximately 45,000 active files in head office. In addition, over 450,000 active files are stored on the board's premises, let alone the many thousands that are stored offsite. Members will appreciate, therefore, that it will take some time to fully integrate the filing process into the new organizational structure.

Mr. Di Santo then indicated that workers have experienced delays in receiving access to their claim files under section 77 of the Workers'

Compensation Act. Before commenting on this issue, it would be useful to explore the process mandated under the act when a worker asks for access to his or her claim file. Subsection 77(2) of the legislation obliges the board to screen all claim files to determine whether they might contain medical or other information that would be harmful to the worker if given to the individual. Where such a situation is identified, the board is then required to provide copies of this medical information, not to the worker, but to the individual's physician. The intent of the section is to ensure that the information will ultimately be communicated to the worker by a health professional who fully understands the implications of the medical opinions contained in the report.

My officials advise me that approximately 20,000 worker requests for access are expected in 1988. I also understand that it may take up to several hours for an access administrator to review a claim file pursuant to the statute.

1620-1 follows



(Dr. Elgie)

~~approximately 20,000 worker requests for access are expected in 1988.~~

1620

~~I also understand that it may take up to several hours for an access administrator to review a claim file pursuant to the statute.~~ The statistics available for the first quarter of 1988 indicate that the access area has been able to process well over 70 per cent of worker requests for access within 10 working days. I should add that in emergency situations access can be made available in as little as 24 hours.

Some additional administrative delays have, however, emerged in the process because it will typically take several additional days for either the ??ISU or the regional office to pass the claim file to the access area. This is a matter of considerable concern to the organization, and I am pleased to report that meetings among staff members to address this issue have already taken place. The present objective is to ensure that a copy of a claim file can be passed to the board's access area in considerably less time.

There are several additional initiatives in this area which I would like to discuss. First, commencing in July 1988, we will embark on a pilot project for the regionalization of access to commence in the Hamilton regional office. Simply put, access to claim files belonging to that office would be processed in Hamilton rather than at head office. It is expected that this initiative will cut several working days from the time that it would typically take a Hamilton worker to receive a claim file. If this project is successful, it will be extended to the other regional offices within the organization.

Second, discussions have also taken place amongst my staff regarding the institution of a new process for the screening of medically harmful information. Briefly put, it is proposed that claims adjudicators and physicians, in the course of their ordinary work, would initially screen documents placed in claim files to determine whether they might contain medically harmful information. If this was the case, an appropriate flag would be placed on the claim file.

Should the claim in question ultimately become the subject of an access request, the access administrator could simply check a part of the jacket to determine whether there existed harmful medical information. It is expected that this initiative, which will take several years to be fully completed given the number of dated claim files within the organization, will significantly reduce the time it takes for a worker to obtain access to his or her claim file.

During the course of Mr. Di Santo's presentation, the chairman of this committee raised the issue of the exclusion of certain industries from the ambit of the act, thereby avoiding universal compensation coverage for workers in the province.

There is no doubt that, at the present time, a variety of industries are excluded from the compensation system in one of two ways: Either the industry is specifically excluded by the terms of regulation 951 made pursuant to the act, or it is not included within the terms of either schedule I or schedule II of the statute.

Despite these exclusions, sections 95 and 96 of the act permit the board, upon the application of an employer, to add that employer to schedules I or II for such time period and upon such terms and conditions as the board may determine. However, these sections may provide for employer-initiated applications.

While the board may actively encourage excluded employers to opt into the system, ultimately the decision is presently in the hands of the employers themselves. I wish to advise committee members that the board is presently examining some aspects of this situation. A legal opinion is being sought on the question of the validity of the exclusion of employers and workers from the compensation system, in light of the equality provision of the Canadian Charter of Rights and Freedoms.

The board has also commenced a policy review of this subject. However, as both the board and this committee noted when discussing the issue in 1985, its ultimate resolution is largely a matter for legislative revision.

I should also indicate that I have recently held discussions with a number of representatives of the worker community regarding this issue. There was unanimity that the present scheme of excluded industries may represent an historical anomaly that should be re-examined.

In a related matter, members of the committee raised concerns about the obligation of an excluded employer to inform workers who commence employment about the absence of compensation coverage for that employment. At present, to the best of my knowledge, there is no statutory obligation on such employers to inform their—

R-1625 follows.



(Dr. Elgie)

~~excluded employer to inform workers who commence employment about the absence of compensation coverage for that employment. At present, to the best of my knowledge, there is no statutory obligation on such employers to inform their workers of their excluded status.~~

There might well be a case to be made that an employer has an individual contractual obligation to fully discuss all the terms and conditions of employment with a prospective employee. However, this is clearly a matter beyond the board's jurisdiction. If an employer is not covered by the act, and has not applied for coverage, the board has no authority respecting that employer's obligations towards his or her workers.

If I may, I would now like to turn to several of the points raised in the submission made by the office of the employer advisor. During the May 30 presentation by Mr. Mandlowitz, he recommended that the current form 7 should be available in both the English and French languages.

To refresh the memories of committee members, form 7 refers to the employer's report of accidental injury or industrial disease. This is the form which an employer will typically remit to the board to establish a claim file.

I would like to indicate to committee members that since January 1985, the board has a printed form called 7(B). This document translates the categories contained in form 7 into the French language. Supplies of that form 7(B) may be obtained directly from the board by any employer.

Mr. Mandlowitz also indicated that, increasingly, the board is awarding benefits to workers based on the doctor's first report, form 8, and only then soliciting information from the employer and/or the worker. He submits that in 1986, 86.4 per cent of the claims instituted on the basis of a form 8 were paid within 10 working days and that 97.7 per cent were granted within 20 working days.

He then goes on to compare this with figures like 58.1 per cent and 78.2 per cent respectively for 1980. He also took the position that these awards are being granted on less than complete file information.

While the statistics provided by Mr. Mandlowitz may be accurate, the office of the employer advisor has made an erroneous assumption that awards are being granted, firstly, without the benefit of form 7, and secondly, on less than complete file information.

As a general rule, claims are not paid on the basis of a form 8 unless an employer's report of accident has also been received. The only exception occurs where employers refuse to, or are negligent in, providing the form 7.

I would also point out, in this respect, that over the last few years, Ontario employers have become much more diligent in submitting their form 7. As well, the board's primary adjudicators are now making more telephone calls, rather than sending correspondence to employers in cases where one or two brief questions may help to adjudicate the claim. In my view, these factors are the ones responsible for the more expeditious processing of claim files in general.

Dr. Elgie

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Mr. Mandlowitz also made a number of submissions regarding the manner in which the board oversees third-party actions on behalf of injured workers. He submitted, in the first instance, that the board will not initiate a third-party action except on the instructions of the employer. I am advised that this statement is incorrect and that the board does, in fact, initiate third-party actions without any encouragement from employers. The elections received from workers are reviewed by adjusters who ultimately determine whether a subrogated action should be initiated.

Along the same lines, the office of the employer advisor alleges that the board will settle cases before the injury claim has stabilized or plateaued. Once again, I am advised that this submission is incorrect. I understand that a legal file is never settled before the board has received a definite prognosis on the injury and where some indication is present regarding how the injury will affect the worker's future earning potential. When the matter involves a claim for loss of income into the future, the file is always referred to a solicitor for review.

Mr. Mandlowitz also raised an issue regarding the second injury and enhancement fund. He submitted that the fund will relieve employers of some percentage of the claim costs where a pre-existing condition exists, or a prolonged disability results, or where an employer is no longer in business.

I wish to advise the committee that this latter comment, particularly, is not, strictly speaking, correct. ~~There are no provisions contained in the legislation which would authorize the transfer of cost to the~~

R-I630 follows



(Dr. Elgie)

...lawyer is no longer in business. I wish to advise the committee that this ~~table comment, particularly, is not, strictly speaking, correct.~~ There are no provisions contained in the legislation which would authorize the transfer of costs to the second injury and enhancement fund, simply because an employer is no longer in business. Typically, what would happen in that situation is that the costs of any present and future liabilities would be charged against the appropriate rate group and not against all employers.

1630

I would now like to respond to a comment made by Mr. Mandlowitz, relating to employers filing deadlines for Workers' Compensation Board assessments. In his statement, he proposes that the the board's filing deadline should be extended from the last day in February to March 15. It is submitted that this initiative would respond to complaints voiced by small business and multi-establishment employers who are also required to file their federal income statements by the end of February.

I would like to advise the committee that on June 24, 1987, the president of the board, in response to a request received from the Canadian Organization of Small Business, indicated that the board would extend the appropriate deadline by two weeks. Thus, the employer advisor's recommendation has already been implemented. It should be indicated that this change will affect the bulk of employers who continue to estimate payroll on an annual basis. However, I should mention that the board has a pilot project under way, involving about 17 per cent of employers who are currently remitting assessments monthly, based on actual payroll figures, rather than on an annual projected-payroll basis. The board is monitoring this project to consider if the method warrants continuation and expansion.

Finally, the office of the employer advisor recommends that a toll-free telephone service be established for employers. It was pointed out that the institution of such a service would help to address employer concerns regarding financial and revenue matters. In fact, on February 1, 1988, the board's revenue branch announced the installation of two toll-free telephone lines. The numbers in questions are 1-800-387-8638 and 1-800-387-8639. These lines will service employers throughout Ontario, the maritime provinces and Montreal. Employers in the Metropolitan Toronto area and vicinity can make use of the board's regularly advertised telephone numbers.

While my response to these questions has been lengthy, I believe it is important for committee members to fully appreciate the complex nature of the issues which have raised in my earlier presentation and by other compensation groups. I would be pleased to respond to any further questions you may have regarding this presentation, as well as related compensation issues.

Mr. Chairman: Thank you, Dr. Elgie. The committee had agreed the other day that in order to make sure that a lot of the questions were answered that were bothering members of the committee that Merike would draw up a list and ask those questions. Is that still OK with members of the committee? Please feel free to jump in as we go.

Dr. Elgie: Could I ask the four vice-presidents to join us at that table in the front place?

Ms. Madisso: We are going into all the questions that were raised that you made note of as we were going through. I have tried to review the old report, first of all, to a kind of status check on previous committee recommendations to see how the board has responded to that. Second, I have done a series of questions in the important areas: rehabilitation, section 86n of the act, supplements and so on.

They are not every question that every committee member has raised. Some of them have been asked and some have been answered just now with Dr. Elgie's statement and so on.

Mr. Chairman: Mrs. Marland, I cannot remember whether you were here at that point or not?

Mrs. Marland: No, I was not, but that is fine.

Mr. Chairman: It was felt that this would be a more disciplined way, given the short length of time that we have. We will not take the whole afternoon and so there will still be an opportunity for members to ??.

Ms. Madisso: I do not believe I will take very long.

Last year, the board undertook to publish a list of its doctors and their areas of specialization in either the Ontario Medical Journal or the board's annual report. Can you inform the committee whether this particular recommendation has been filled?

Mr. Chairman: Just before you do that, I wonder if you could—

Dr. Elgie: Introduce the people.

Mr. Chairman: Yes, for Hansard.

Dr. Elgie: Starting on my extreme left is Sam Van Clieaf, the vice-president of corporate affairs. We have Dr. Elizabeth Kaegi, the vice-president...

R-1635-1 Follows.



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Dr. Elgie: Starting on my extreme left is ~~San Mary's Hospital, the vice-president of health affairs. He has got Dr. Elizabeth Kaegi, who was president in charge of policy and specialized services and Mike Czetyrbok, who is now the vice-president of client services and Robert Coke, who is the new vice-president of policy and analysis.~~

Dr. Kaegi, I remember your showing me that list of physicians' names and where it was being published but I just cannot recall where it was going to go.

Dr. Kaegi: I am afraid I cannot remember where it was published either. I think it was in the annual report, but I am not absolutely sure. Does anybody remember, do you think? The list was prepared.

Dr. Elgie: I saw the list and I recall it was going to be published somewhere. I will have to find out and get back to you where it was published.

Ms. Madisso: I do not believe it is in the annual report so it has to be some place else.

Dr. Elgie: I know that I saw the list.

Ms. Madisso: Again, in the committee's report before last, it recommended that, "The entire matter of asbestos-related diseases should be referred to the Industrial Diseases Standards Panel." Is that a step that the board has taken?

Dr. Elgie: I can send you a list of all the matters that have been sent to the industrial diseases panel. A large number of them had to do with asbestos-related diseases.

Ms. Madisso: Last year, the committee recommended that chiropractic services should be immediately be established at Downsview. The board's response does not specifically address the chiropractic question. I went back to last year's Hansard, and a year ago there was talk about a research proposal being put together by two McMaster doctors and an advisory committee was to see to the implementation of that research proposal.

I am wondering how far you have got in implementing the committee's recommendation.

Dr. Elgie: There had been a proposal to carry out that study. Discussions had taken place just prior to the Downsview review team's report. But you will recall it was recommended that the board abandon Downsview Hospital forthwith and turn it over to the Ministry of Health to become a public hospital, type "J". In view of that and in view of the process that we then put in place to analyse the recommendations of the Downsview review team, that project was set aside and has not been reinstituted.

I cannot give you any commitment as to when it will be, or if it will be, because the medical rehabilitation proposal that I have put to you today and put earlier would involve disseminating rehabilitation into the universities and into the communities and would take it out of the hands of the board. I cannot give you an answer to that question.

Mr. Chairman: I am more confused about the role of Downsview then. You are not implying that that would mean the closure of Downsview?

Dr. Elgie: Eventually.

Mr. Chairman: No, under what you propose today.

Dr. Elgie: IF the medical rehabilitation strategy that has been put to the board—for which they have asked that we prepare a feasibility study and an implementation proposal for the costing—was agreed up, then it is our view that over the next three to five years, Downsview would be phased out and closed down.

Mr. Chairman: And become a public hospital?

Dr. Elgie: No.

Mr. Chairman: That would not be up to you?

Dr. Elgie: No. The Ministry of Health did not agree with the Downsview review team that it should acquire that hospital and that property as a public hospital, so the Downsview property ?? The board of directors would have to decide what to do with it.

Mr. Chairman: How close are we to that? Is that a reality or is it speculative? Where we are at in that role?

Dr. Elgie: The board of directors considered the issue of the medical rehabilitation strategy—I think it was in March, was it not?

Interjection: Yes, it was.

Dr. Elgie: —and gave us clearance to proceed with the preparation of an implementation program, including costing, and it will make the final decision on proceeding with that sometime in the early fall. In the meantime, we are in the midst of negotiations and discussions with the Ministry of Health and the Ministry of Labour to see just how this might come about.

At the same time, we have a number of pilot projects in the community under way to assess them and we are going to ?? to be a community clinic process.

It is fair to say we are having discussions already and the results of those discussions will be part of the implementation proposal. I will take it to the board in the early fall for a final decision.

Mr. Chairman: At this point it is still in a state of flux.

Dr. Elgie: Yes. That is right. But I must say there is a general support for it by the doctors. It is a sort of move that I think interested members of the community have...

R-1640-1 follows



~~(Mr. Chairman)~~

~~State of Florida~~

1640

Dr. Elgie: ~~Yes, that is right, but I must say there is general support for the board of directors. It is the sort of move that I think interested members of the community have been calling for. I hope we have accepted that legitimate desire they have had and tried to respond in a very good way.~~

Mr. Chairman: I hope—

Mrs. Marland: I have moved because I cannot hear.

Dr. Elgie: There you are; you were over there a minute ago.

Mrs. Marland: I have decided maybe I should be at Downsview because sitting there, I could not hear you.

Dr. Elgie: I think I should be at Downsview, maybe.

Mrs. Marland: Just to further the question.

Mr. Wildman: Before or after its ??

Dr. Elgie: I have just come back from a debating society up in the chairman's riding, and it is not good for the voice. You may not know who the participants were.

Mr. Wildman: I have a good idea who.

Mrs. Marland: Could you just rephrase the question again, so I am sure I am not jumping in at the wrong point?

Ms. Madisso: The committee recommended last year that Downsview get a chiropractic service established there.

Mrs. Marland: We discussed that question at length at our last day last week and I notice there is not a response in today's statement from you dealing with that.

Dr. Elgie: No. I have just responded to it.

Mrs. Marland: Yes. I heard your response and your response is that recommendation was not enacted because of the state of flux as to the future.

Dr. Elgie: There is a number of changes that Downsview has undergone and will be undergoing, and we do not propose to carry out research studies.

Mrs. Marland: OK. I guess my question, Dr. Elgie, as a supplementary to that, is that in this case the recommendation dealt with Downsview because Downsview is the existing physical plant facility which is a major treatment centre for injured workers. If it is not continued in Downsview, it does not matter to me where the location is necessarily or whether it is regionalized

or in a clinic form.

The future of Downsvievw is not as great a concern for me as the avenues of treatment to workers, and I see that as a very serious recommendation made by the committee last year, which I was not a member of. it seems to me from what we heard last week, which was certainly from one side, which I respect, that this recommendation had literally been shelved. My feeling is that the board has to address the use of chiropractic services as a form of treatment for injured workers.

So my question would be, regardless of whether Downsvievw goes on or whatever the alternatives are to Downsvievw down the road, it was suggested, and it is all in our Hansard, and you will be reading it—and I am sure if you had staff here that you heard it—that there is a prejudice. Maybe I should be addressing you, Dr. Kaegi, if that is your area at the board, that there is a prejudice against the practice of chiropractic medicine; the prejudice is by the Workers' Compensation Board. It was stated in fact that the medical people at WCB felt their own personal positions and programs were threatened. I do not have the wording of that report in front of me from last week, but there were very strong statements made.

Some of those statements, in fact, were in the written report of Mr. ??Chapman-Smith—is it Mr. ??Chapman-Smith—from the chiropractic college. I wondered if you would like to address that question. The very fact that the recommendation was not implemented. The response was that there was an ongoing study. In fact, we find there has not been an ongoing study, and now we are talking about not doing anything more because the Downsvievw in the physical sense may not even continue. So where are we going with treatment for injured workers with a very viable alternative to traditional medical and surgical practice?

Dr. Elgie: Could I just make an initial response, before I ask Dr. Kaegi to answer that? I think there must be some misconception about

R1645 follows

(Dr. Elgie)

~~misconception~~ about something, Mrs. Marland.

Chiropractic services are paid for in this province by the board. That is not an issue. We pay for those services and they are paid for without the need for a medical referral to a chiropractor. In the province of Quebec, as I understand it, there must be a referral from a physician. So to suggest that there is some hidden agenda about whether or not injured workers can see chiropractors is an unfair accusation.

With respect to the future, I have told you that the board's view is that Downsview—and the future of the medical rehabilitation program and strategy is in a state of flux. We do not now intend at this moment to get involved in any such research studies.

Mrs. Marland: Dr. Elgie, let me just make it clear that that accusation is not mine.

Dr. Elgie: Good. I am glad of that.

Mrs. Marland: But I said that; it was a statement and a very clear accusation that was made to this committee by the people who were here on Thursday from the chiropractic association.

Dr. Kaegi: I guess I would like to reiterate what Dr. Elgie has said. Injured workers throughout the province are entitled to choose their own health professional for their particular condition and they do. Large numbers of them select a chiropractor to provide them with their care and the board does not interfere in that process.

We do monitor the health care that injured workers receive and for that purpose within the board we retain the services of a chiropractic consultant who provides us with advice on the quality of chiropractic care that injured workers are receiving.

Many physicians in the community and indeed board physicians, on occasion, will identify that an individual may benefit from chiropractic intervention. As Dr. Elgie has said, our board has been very forward thinking in identifying appropriate chiropractic services that can be brought to bear on the needs of an injured worker.

Also, I am currently part of a committee that is involved in negotiations with the chiropractic association, and we have been looking with them at ways of involving them in other ways of providing services.

We are actively involved in working with the chiropractic community to identify ways in which their services, which can many times be very helpful to injured workers, be brought to bear on an injured worker's problem.

Mr. Chairman: Mrs. Marland, is there anything more on that, because we have quite a few other questions dealing with a lot of other issues? I am not trying to cut you off, but we have a large number of questions to deal with while these people are here.

Mrs. Marland: I think this is a very serious area, because a very

serious accusation has been made. What you have said is that injured workers can choose their medical service. We were told that chiropractors were not in the Downsview facility. We were told there is a physiotherapist there who does not some manipulative therapy, but in fact that service is not available to them at Downsview.

Dr. Kaegi: We have actually a large number of physiotherapists on staff at Downsview and many of them have taken post-graduate training in manipulative therapy. The chiropractic association and the board were working together to introduce a research project at Downsview before the media and the other events overtook us and made a state of uncertainty at Downsview, at which time we decided it was inappropriate to conduct a research study looking at alternative ways of treatment.

Mr. Chairman: Could we come back to this after we have done some more questions, Mrs. Marland, because I am really unhappy about spending too much time on this one when there are so many other questions.

Ms. Madisso: Last year the standing committee also recommended ?? "that the board should abandon its rule that a worker must be 57 years old before he or she can qualify for the older worker supplement." The board responded by saying that its choice of age 57 is ?? "based on the board's many years of administering the act and in dealing with the injured workers of Ontario."

Can you perhaps explain to the committee more specifically how you arrived at 57 rather than 56 or 58 or 50?

Dr. Elgie: As I recall the debate that took place on Bill 101, Mr. Chairman, you yourself had some views on that issue.

Mr. Chairman: I remember it very well.

~~Dr. Elgie: You did not know whether 60 was the appropriate age for the "older worker" than 50.~~

R1645 follows

1650

~~Dr. Elgie: As I recall the debate that took place on Bill 101—Mr. Chairman, you yourself had some views on that.~~

~~Mr. Chairman: I remember.~~

Dr. Elgie: You did not know whether 60 was the appropriate age for an older worker or 59. It is an easy issue to determine when they access an older worker like that.

Mr. Chairman: That was deliberately left out; the age.

Dr. Elgie: Yes, I know it was. And I know that the general rule has been something in the area of 57 years of age. But I wonder if Henry McDonald, who is the director of policy, recalls the recent figures that we developed on this. Do you have those? Do you remember those figures roughly?

Mr. Chairman: You have to come up, sorry, in order to be recorded by Hansard.

Dr. Elgie: This is Henry McDonald, director of the policy development area.

I asked for those figures to be developed some weeks ago. Indeed, there are a very large number of workers below the age of 57 who are receiving a supplement.

Mr. McDonald: If memory serves me right, there are approximately 150-odd workers receiving older worker supplements currently, between the 50 and 55 age bands, I believe. We have a breakdown of them and I do not have them with me, of course, but we would be pleased to provide them.

There are a fair number of workers below 57 who are qualifying for older worker supplement pay.

Dr. Elgie: I think the most interesting figure on that, if I could just take a moment, Mr. Chairman, is that when that recommendation came forth in the 1985 hearings as I recall, we had something like 750 older worker supplements. Today, there are over—6,000?

Mr. McDonald: Four thousand, over four thousand.

Dr. Elgie: Four thousand older worker supplements.

Mr. Chairman: Where did the age 57 come from?

Dr. Elgie: It is just a guideline for adjudicators.

Mr. Chairman: Because I will tell you, I do recall that debate very well on Bill 101. The numbers that people were throwing around were not 57; it was 55. That was the debate. And if 57 has been developed by the board, they have done it for reasons known only to them because that was never—the debate, as I recall, was more around 55. But nobody wanted to put 55 in there because they feared that would be used as the number.

Mr. McDonald: In my experience, I have not personally seen a document with a number on it at all. I agree I believe with what Dr. Elgie said earlier; you, for practical purposes tend to focus on some number as a point of reference, but it was not a fixed number. And 57, rightly or wrongly, has been bandied about for some time as a reasonable point of departure. But I do not believe that has ever been concretely accepted within the organization at the point at which you could not go below because we have in fact gone below it on a case-by-case basis.

So, as I say, 57 has tended to achieve some legitimacy, but I have not seen it documented.

Dr. Elgie: Could we forward you those figures, Mr. Chairman?

Mr. Chairman: Yes, we would appreciate those numbers. Just a final question before you go.

Is there consideration given to the language ability of the older worker when it is being considered? Because I can tell you, I can dredge up the file of my 55-year-old unilingual bush worker from Chapleau again, if you like, where that really is a factor; the inability to speak in English.

Mr. McDonald: Well, it certainly should be considered. When you are considering supplement, be it normal temporary supplement or older worker supplement, all factors with respect to the individual worker should be considered, including language. So, yes.

Ms. Madisso: Now, to get back to some of the issues that the committee has been discussing this time around, back to section 86n again, if you do not mind.

What criteria does the board consider when it is deciding whether or not to review a Workers' Compensation Appeals Tribunal decision? How do they apply the criteria in the decision 72 case and in the chronic pain case?

Dr. Elgie: We went over that in some length at last year's hearing, but I am pleased to go over it again.

I think I should tell you first of all it is a process. We have in place a committee made up of people from general counsel's office and policy. Is that right?

??Mr. McDonald: (Inaudible).

Dr. Elgie: Yes, from the policy area. They meet monthly and review all of the decisions that have been rendered by the appeals tribunal in that period of time. They then draw up a recommendation to me which I then forward to the board of directors.

Now, a number of times they will report that there is a decision they have some concerns about and then they may make a number of recommendations. One of them would be, "I think we should write to the tribunal about it and ask to make presentations the next time this comes up." You see, the development of some policy can be carried out that way.

In the case of an 86n, what they look at ...

1655 follows

(Dr. Elgie)

~~... write to the internal committee and make recommendations the next day
and summarize to assist the development of policy can be reviewed
May~~

In the case of an 86n, what is the issue and what the board of directors look at is: Is this a matter of policy and general law? Second: Is it a matter that is of great importance to the compensation system? And finally: Is there a good and valid purpose to be served by the board of directors carrying out the review?

Those are the three questions that they put to themselves if there is a recommendation from the internal committee that an 86n review take place.

Now, in the case of decision 72, it was the decision of the board of directors—and I do not say that because I do not agree with it because I do. It was the decision of the board of directors that the issues raised in decision 72, namely, what is an injury by accident, go right to the very heart of compensation and who should be compensated. And they go to the issue of what is an accident and what is a disablement. Those were matters that in the view of the board of directors had to be reviewed.

Ms. Madisso: I know that there were court cases on the same phrase and you mentioned that was one of the reasons decision 72 was reviewed. Was there anything like that for chronic pain?

Dr. Elgie: I do not know. In decision 72, there was clearly uncertainty in the community about what "injury by accident" meant.

No, on the issue of chronic pain we had a clear-cut situation where the Ontario board, being the first board in any province or territory in the country, recognized chronic pain disorder as a compensable condition. The criteria leading to compensation and the retroactivity provision with respect to the payment of compensation were different from those proposed by the appeals tribunal in decision 915a and decision 915.

Clearly, there had to be a resolution of whether or not the board of directors feels that its proposal with respect to retroactivity and the criteria for determining whether or not the chronic pain disorder are the correct ones or whether the proposals that have been outlined in the May, 1988 decision by the appeals tribunal have such overwhelming logic that they merit reconsideration.

Ms. Madisso: Under the act, you also have discretion to hold a hearing or not.

Dr. Elgie: Yes.

Ms. Madisso: And the committee has heard some complaints that you certainly are not holding any on chronic pain.

Dr. Elgie: That is not accurate. Under section 86n, the board may hear a hearing either orally or by written submissions.

Ms. Madisso: They were complaining about not having—

Dr. Elgie: In this case, there are some 20 cases I believe and under this section, parties that are likely to be affected—that means each worker and each employer—have a right to attend and present their view.

The board of directors feel, and I concur, that this is a part-time board and it could not possibly handle the number of oral submissions that might be required. If all of those with a right to attend, did so; if you invited participants that one would inevitably invite to come to a hearing such as this or have submissions from—by that I mean medical associations, medical schools, Ontario Federation of Labour, Union of Injured Workers, Canadian Medical Association, all of those who you would invite and want their views on the issue of chronic pain. And the law society, I do not know, on the issue of retroactivity.

These are major issues and we feel that we can deal with those with a part-time board that has to order its life accordingly, by way of written submissions and achieve a fair and equitable process.

Ms. Madisso: Well, the test criterion is ??

Mr. Miller: I was just wondering; a supplementary. Dr. Elgie, what percentage is challenged by the employer?

Dr. Elgie: Pardon?

Mr. Miller: Do you have a number on how many are challenged by the employer?

Dr. Elgie: Well, the employer does not have a right to challenge under 86n. I like not to think of it as a challenge.

Mr. Chairman: I think Mr. Miller was talking about simply appeals.

Mr. Mackenzie: Yes.

Mr. Chairman: How many employers appeal decisions to the board?

Dr. Elgie: Oh, to the appeals tribunal?

Mr. Chairman: Yes.

Mr. Miller: Yes.

Dr. Elgie: I do not have those numbers.

Mr. Chairman: It could probably...

??Mr. Miller: Do you have them?

Mr. McDonald: We will see if we can find those numbers for you.

??Dr. Elgie: We will get those for you.


Mr. Wildman: Can I ask a supplementary?

Mr. Chairman: Sure.

Mr. Wildman: I understand your rationale for dealing with the 86n review of the chronic pain by written submission and then having the board deliberate and make a decision.

Are you not afraid that in using this process, you are going to leave the board open to accusations of ...

R-1700 follows



...having the Workers' Compensation Board do the work and decision, but are you not afraid that in doing this process you are going to leave the door open to accusations of making decisions behind closed doors and, as a result, people feeling aggrieved on either side, whether it be the injured worker who is experiencing chronic pain or the employers who may see this as a decision that may in fact affect their assessment substantially and they will not feel that they have had the opportunity to participate in an open process?

1700

Dr. Elgie: Once the council to the board of directors has met with the committee that will be involved in directing how to handle the process, I anticipate that there would be a call for briefs, first, from those who write as a party; second, to invited participants; and, finally, a publication in the Ontario Gazette for anyone else who wanted to come. Once the briefs were received, I anticipate they would be disseminated to all those who are parties, who are invited participants and who have expressed an interest, for their comments, so that the board of directors would not only see the original brief but any comments or criticisms that there might be of that brief.

Frankly, I think we all understand how we might like to see the system, but when you have a part-time board of directors, all of whom have other things they are doing, you have to arrange your schedule in such a way so that you can deal with a variety of situations. In decision 72, the number of parties were much more limited and we were able to deal with them through a public hearing process. But, again, it was not a matter of questioning. There was no cross-examination. It was parties standing up or sitting down and making their submissions. Here we are simply saying that can all be in writing.

Ms. Madisso: There is also the discretion about staying of the payment of benefits under that section. What are the criteria you apply there in that decision?

Dr. Elgie: I think those are criteria that will be annunciated in each decision that is rendered. It will depend on a variety of things that are made in their submissions. I could not comment ahead of time what they would be. Those are decisions. There is a decision about whether we will stay payment. You call for briefs from both parties and administrators of the general council's office of the board and then you make a decision on it. You do not make a decision ahead of time. It would depend on the particular situation.

In the case of chronic pain, I might say that we did recognize concern about staying a case. By the way, I do not think one should think of that as an unusual process. There is not a tort case before the courts that is under appeal that the judgement is not stayed that I am aware of. So it is not an unusual process to stay a decision.

Mr. Chairman: In the court system.

Dr. Elgie: In the court system. But recognizing that the board had been, we felt—and I still feel—very progressive in recognizing chronic pain disorder, all of those people who may have any consideration of pain held up as a result of this process have been advised that they are free and able to apply for compensation under the board's existing chronic pain disorder

Dr. Elgie

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policy, and many have. So they could be compensated through that route if they meet the board's criteria.

Mr. Chairman: I think what Merike was after was some sense that there was a set of criteria or guidelines that you went by when you are making that decision. How could you not have something?

Dr. Elgie: I will have to read the submissions and see what they say and then we can reach a decision.

Mr. Chairman: So there really are none. Go ahead.

Ms. Madisso: Is there anything common to 72 and the chronic pain; any criteria that ?? ??

Dr. Elgie: In decision 72, it had been very close to about a year and---I cannot recall her name---the injured worker had been receiving benefits for many months and the board decided that it would not be fair or reasonable to stay her benefits, since she had been in receipt of them for such a long period of time. Had there been an immediate decision made to review decision 72, I do not know what the result would have been. But I do know that if there had been a decision made to stay, you wonder whether one would have had an obligation to go back and try to collect moneys that had been paid to her. It would have been quite a difficult process.

Ms. Madisso: I do not ~~recall that you said in today's statement, and~~
~~I have worked through the board last year, too, what position the board does~~
~~take on 7206-12-14.~~

R-1705 follows.

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(Ms. Madisso)

→ ..notice that you said in today's statement, and I have worked through the Hansard last year, too, what position the board does take on ??section 86n1? Who does have the final say in these questions on general policy, in your opinion?

Dr. Elgie: Well, section 86n1 to me seems very clear that ultimately the ultimate decision will only be made once the Workers' Compensation Board directs the appeal tribunal to reconsider a matter in the light of the determination that is made by the board of directors. Historically, there is no doubt what Paul Weiler talked about in reshaping and reforming workers' compensation. He said, and he believes, that the final say in policy area matters should be matters for the board of directors of the workers' compensation system.

Ms. Madisso: And is that the board's position?

Dr. Elgie: The board does not have a position on it, other than to say that it believes section 86n1 gives it the power to direct the tribunal to review a determination in the light of its decision which, to me, sounds like the board having final authority in matters of policy and general law, which was what the intention was. I understand that the ??drafters, and it certainly was the intention of Paul Weiler, in reshaping in workers' compensation.

Ms. Madisso: Back to supplements again?

Interjection: Yes.

Ms. Madisso: Your 1987 year-end review and 1988 agenda, I have it here. I believe the members got a copy of this, too.

Dr. Elgie: I think they all got copies of it, unless there are new members who were not at the previous committee meeting.

Ms. Madisso: You state at page 8—

Dr. Elgie: All members of the Legislature got a copy of ?? ??

Ms. Madisso: Oh, the Legislature? You state that a legal opinion received by the WCB indicated that the manner in which the board administrators had interpreted various parts of this section was likely contrary to the wording and intent of the legislation. I am wondering about the origin of this opinion; who asked for it, who gave it, and so on. How did it come into being?

Dr. Elgie: The board, as I recall it, commenced its own internal review of ??subsection 45(5) using its own legal counsel who reached this determination.

Ms. Madisso: So the board asked for the opinion and your council gave it? Is that what you said?

Dr. Elgie: No. Once board council had reached a determination that, in its view, we were not properly applying the threshold test that was intended by subsection 45(5), as I understand it a further opinion was then sought from Paul Hess on that; an outside counsel.

Ms. Madisso: A legal opinion came from outside counsel at the board's request.

Mr. Wildman: Paul Hess used to be counsel for the Ministry of Labour?

Dr. Elgie: Yes. He is retired.

Ms. Madisso: Why was this opinion asked for at this particular point in time?

Dr. Elgie: Just to get an outside confirmation for rejection of the opinion that we had formed internally.

Ms. Madisso: And what created your internal opinion then?


Dr. Elgie: Just legal staff reviewing subsection 45(5). Is that not ?? The issue of the threshold test has been one that has plagued the board for many years. You may or may not recall that in the late 1970s there was a case called the ??Geonokakis case—do not ask me how to spell that; I will do my best later on—in which the board had applied a straight wage loss test. In that case, the individual had not sustained a wage loss, but he had maintained his wage level by working more overtime ??with even more bonus pay.

That was taken to Divisional Court and the Divisional Court said: "No, you cannot look at just what his income is. You must look at what the effect the injury has had in terms of impairing his earning capacity in a significant way." So the issue of the threshold test is one that has been ?? for many years. This is just our view of the appropriate way that threshold test should be applied and I think plain reading of the act would support that.

Ms. Madisso: So the decision turns on the definition of "earning capacity," does it, or the opinion that—

Dr. Elgie: On subsection 45(5) itself it turns on where the impairment of the earning capacity...

R-1710 follows.



(Dr. Elgie)

~~...the impairment of the earning capacity~~ of the worker is significantly greater than is usual." Now there are a lot of interesting words in that threshold — "??for the nature and degree of the injury the board may supplement." So the threshold test is an impairment of the earning capacity of the worker must be significantly greater than is usual for the nature and degree of the injury.

1710

Ms. Madisso: The committee did hear complaints from—

Dr. Elgie: I must say, if I may, that the whole issue of subsection 45(5) is presently before the Workers' Compensation Appeals Tribunal as well.

Ms. Madisso: The committee did hear complaints from some groups that the communication system between the board and injured workers' groups is not what they wish it were and one of the examples they cited was the supplement policy. They cited, I believe, that they in fact did not get guidelines that went with the supplement policy. Does the board have any plans to ameliorate that?

Dr. Elgie: There are a number of things we are trying to do in order to improve communication because the whole concept of reshaping and reforming workers' compensation is to have more exchange of views. Under Henry McDonald, the new director of the policy development unit— Is it a quarterly bulletin, Elizabeth or every two months?

Dr. Kaeqi: Quarterly.

Dr. Elgie: A quarterly policy development bulletin is being put out. The first issue was in March and it sets out areas of policy that the policy development area is looking at, so that the community of interests will know what is going on in the policy development area. Similarly, Mr. Henry McDonald has been involved in setting up an advisory group made up of a great variety of interested groups, from employers of injured workers to labour, so that they are involved in the consultative process with respect to policy matters.

Having said all that, there will always be some legal issues that I do not think you go consulting around about to see what the world would like you to do when you have a view about the legal interpretation of the section. But, in general, I think what we are putting in place is a consultative process that will be healthy and be good for the system.

Mr. Chairman: I am sure members of the committee will correct me if I am wrong, but there has been more complaints about subsection 45(5) than, I think, any other aspect. I know you have a particular spin on your interpretation in here, but I think what we would like would be some kind of legal opinion given to us on which the decision was made to change the policy of subsection 45(5) so that we can wrestle with it ourselves as a committee. Right now, I would not know how to go about, if I were an injured worker or a representative of an injured worker, challenging the Workers' Compensation Board interpretation of subsection 45(5) and the board says, "It was our view that we had to adhere strictly to the legal interpretation of subsection 45(5)." I know that I, for one, would very much like to have a copy of the

Mr. Chairman

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legal interpretation regarding that.

Dr. Elgie: Maybe I could do this, as I say the whole matter is being argued, or will be argued before the appeals tribunal very shortly, and we have submitted a written brief to them. Perhaps I could table that brief with this committee. Would that be in order?

Mr. Chairman: And that includes legal—?

Dr. Elgie: It includes the legal background that led to the decision. Yeah. It is a public document, tabled, and you are welcome to receive a copy of it.

Mr. Chairman: OK.

Dr. Elgie: I would wonder about the merits in this committee of looking into the appropriateness of the legal interpretation of policy but it is a matter that is presently before the appeals tribunal. You might just want to see to it by ?? I know that you have unrestrained and unlimited power, ?? but you may want to think about that matter.

Mr. Chairman: I will restrain myself.

Dr. Elgie: ??

Mr. Chairman: Yeah.

Ms. Madisso: On to vocational rehabilitation. I distributed to the members a news release from the WCB on their new vocational rehabilitation strategy. A couple of questions on that. You talk about early intervention whenever appropriate and accessible intensive services provided as required. Dr. Kaegi, when she was here before the committee, talked about a 17-month period, on the average, for referral to vocational rehabilitation. She said that the new strategy would significantly reduce this time frame.

(1715 follows)



(Ms. Madisso)

~~...Dr. Kaegi, when she appeared before the committee, talked about a 17 month period on the average court referral for vocational rehabilitation. She said that the new strategy would significantly reduce that time. I am just wondering, on behalf of the committee what "significantly" means in this context. What kind of reduction can we see from the 17 weeks and perhaps when can the reductions—~~

Dr. Elgie: Seventeen months.

Ms. Madisso: Seventeen months I mean. When can we see the reductions in place.

Dr. Elgie: Well, as I say, we are just in the process of developing an implementation proposal to take to the board of directors this summer. What we would propose when it is all ultimately in place is that within 45 days of a registration of a claim, the adjudicator would have to make a decision to whether or not it was appropriate in this case to refer this person to vocational rehabilitation and would be obliged to review the file every six weeks and put his or her mind on the same issue. At the end of a period of time, I believe it is six months, that the worker would then be in a position where he would have almost a right to a vocational rehabilitation assessment, in the event that one had not been ordered prior to that for the periodic six weeks review.

If you want further comment on that—

Dr. Wolfson: I think that really captures it. The average time for referral in that kind of scenario would be between three and six months rather than the current average closer to 18 months. So, it would be a very substantial reduction.

Ms. Madisso: When would this reduction begin? Do you see it beginning?

Dr. Elgie: That will depend on the board's approval of the proposal we will take to them in the summer. Or they will do some pilot projects first. Plus we will do it on a broader scale than the miners we are looking at.

Ms. Madisso: The press release also states that the strategy addresses many of the main concerns raised by the task force on vocational rehabilitation the Majesky report. I am wondering which of the concerns raised by the task force the strategy does not seek to implement? Which ones you decided to--

Dr. Kaegi: I think perhaps the key one is the recommendation by the task force that the board establish a separate vocational rehabilitation division to which all cases requiring vocational rehabilitation would be referred. That was a recommendation that the board did not incorporate into its strategy because we believe that by providing an integrated service to workers, where you have teams as you know in the integrated service units and in the regional offices. Providing a team approach to the needs of workers is a much more efficient way of ensuring that workers are referred to vocational rehabilitation services as early as it is appropriate. So that was one particular recommendation that we did not implement because we felt we had an

essentially better structure.

I think that is probably the most significant recommendation. Another one that is nonincorporated is in our strategy we have a very clear role for the worker, in terms of setting the goal of the vocational rehabilitation program and indeed of the accident employer. We felt that that was a very important group of people to get together to plan and set goals for a vocational rehabilitation program. That again is different from what was recommended in the task force report where the absent employer was not included as a key member of the group making the vocational rehabilitation plan.

Dr. Elgie: We can provide the committee members with an outline of things that we really agreed with or more substantially agreed with or disagreed with them. I think that when you cut through a couple of issues, like the ones that Dr. Kaegi has mentioned, there really was quite substantial agreement. There are number of other changes that would require legislation but from the board perspective for those areas that applied to it, barring one or two things and even in those there is not violent disagreement, it is just that we do not think it is appropriate to restructure the board and name a vocational rehabilitation section when we have just gone through a very massive project to integrate these service. We have set up a specialized vocational rehabilitation service division which we think will serve the same purpose and we would propose to have a vocational rehabilitation case worker, which we think goes part way towards the kind of thing that the task force wanted.

Mr. Chairman: I think what is confusing me in this whole matter is that the board says that, I think the number 85 per cent was used, agree with our implementing or agree with 85 per cent. Majesky said in his press conference...

R-1720 to follow



(Mr. Chairman)

~~...what is not confusing me on this whole matter is that the board says that, I think the number 95 per cent was used, that agreed with our implementing or agree with 95 per cent. Mr. Majesky said in his press conference that 85 per cent of the recommendations are being ignored.~~

1720

Mr. Wildman: Seventy five per cent.

Mr. Chairman: Was it 75 per cent? So you can see why there are questions. That is why it would be nice to know which one to—

Dr. Elgie: We can provide you with that information.

Ms. Madisso: Further on a question of medical rehabilitation and Downsview. One of the Majesky recommendations was that all of the Downsview review team recommendations be accepted. You were talking about Downsview and its connection with the board and the thought that it may indeed become severed from the Workers' Compensation Board and possibly become a public hospital. There were some other recommendations in that area and I am wondering how closely you have addressed those. One of them was that the board would contract for service with Downsview and with other facilities close to the injured workers home. Downsview would continue to provide ambulatory physical and medical rehabilitation but no inpatient care or vocational rehabilitation. Those areas of Downsview's prognosis—

Dr. Elgie: Well, in a general way I think people who compared both reports would say that the proposal we have put forward goes much further than what the Downsview review team recommended.

Ms. Madisso: I was interested in that comment. How does it go much further?

Dr. Elgie: Well, the Downsview review team recommended that the Ministry of Health designate the Downsview hospital as a type J rehabilitation facility available to the public in general because it felt, and you will recall there was a sociologist, Dr. Garber who was on that task force, who felt that injured workers and citizens who had been injured in other ways should be dealt with in a similar setting. Then they laid out a timetable for the turning over of that facility to the public through the Ministry of Health. The Ministry of Health took the position that it was not willing to take over the facility and carry on with it as a type J hospital. So the board then set out to develop a strategy which was in line with the main thrust of those recommendations.

Indeed, we took it beyond preserving a type J hospital in Toronto as a centre of excellence but instead proposed a dissemination of excellence throughout the province with the provincial institute centred on one medical school or one university based hospital. With the regional centres in other university affiliated settings and with the number of community clinics, frontline clinics dealing with rehabilitation in an estimated number of communities ranging from 50 to 150 setting. That is the proposal that is before our board of directors and we believe that it is not only in line with the Downsview report; it goes further.

Mr. Miller: Why would the Minister of Health not support that? Was it operating costs? Was there any indication?

Dr. Elgie: We did not get any indication. But, by the way, I think that the proposal that is put forward, tying it to the medical schools and teaching facilities and so forth, is superior but I may have a bias because of my background. I think that rehabilitation is a growing field in this province. I visited some of the rehabilitation facilities in the province, particularly in Kingston and in Ottawa and in Toronto and I can see great strides have been made and I think it is important that those centres of excellence be used.

Ms. Madisso: Just getting back quickly to the question of communicating with client groups. I do not think we have quite finished that discussion. Was there something else you wanted to say Dr. Elgie?

Dr. Elgie: I do not think so. We have done a number of things as I say. One is that we are just in a process now of developing this advisory committee for the policy areas so that there would be an occasion to talk about issues and get advice about who else should be contacted for example. There is the quarterly policy bulletin and of course there is the monthly communique that the board puts out on its own which sets out matters that have been dealt with by the board of directors at each meeting. We think that that is the beginning of a very healthy process.

Ms. Madisso: The complaints we had were that the manual updates arrived late and that some of them were incomplete. For example, the

R-1725 to follow

(Dr. Elgie)

so we know that that is the beginning of a very healthy process of consultation.

Ms. Madisso: The complaints we had were that the manual updates arrived late and that some of them were incomplete, for instance, the guidelines for the supplements never did appear. Is that correct or not?

Dr. Elgie: I do not know the answer to that. Henry McDonald would you comment on that please?

Mr. McDonald: The problem with manual updates is another outcome of the general reorganization of the board and as part of the master reorganization that Dr. Elgie alluded to in his presentation, one of the function that was suspended for some period of time was the manual's responsibility which was reallocated from our system over to the policy group under my responsibility so there was in fact some displacement of service there and we are trying to remedy at the moment so there was a period of probably three to six months where we were not getting manual update out to the subscribers to manuals. We are aware of the problem and we are trying to remedy as quickly as possible.

Ms. Madisso: Now they claim that the guidelines of the supplement policy never did come. Are they something that is directed to these people or not—

Mr. McDonald: The guidelines were never any formal administrative guidelines or the type that would have been included in our manuals to begin with. There were interim guidelines developed anyone who asks for them they were distributed. I am not sure how wide the distribution was, but they were made available upon request.

Mr. Chairman: Ok. This is the end of ?? questions. Mr. Wildman is on the list and anybody else who wants to get in.

Mr. Wildman: Thank you very much Mr. Chairman, I would like to refer to page 43 of Dr. Elgie's presentation. I would like to use one example. I realize that Dr. Elgie indicated that the board is reviewing its present policies to determine whether revisions are required. Let us use the example of isocyanates, a designated substance.

If an individual is found to have a sensitivity to isocyanate, such that he or she may have asthmatic reaction to exposure to isocyanates. But when that individual is not exposed directly to isocyanates they do not have that asthmatic condition. They certainly cannot be deemed to be totally disabled. I would not think. They are sensitive. They cannot go back to the job they had because, it will trigger this kind of reaction and then also might most likely will contribute to a further deterioration of their health. What is the board's position? How do you determine whether or not that individual should in fact get some financial benefit because that individual cannot return to his or her place of employment?

Dr. Elgie: Can I ask Dr. Kaegi to comment on that. It is very difficult. I appreciate it.

Dr. Kaegi: It is a difficult one. I think the first problem that

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arises with isocyanate related asthma is in reaching the diagnosis. Asthma, as you are all well aware is a very common condition in the general population and sometimes a worker will develop asthma working with isocyanates and quite likely make the suggestion that the asthma is caused by the isocyanates. When such a claim is made to the board, the first thing that we have to do is establish that the individual in fact has asthma and not some other respiratory condition. Once we have established that the individual has asthma we have to try and establish that have isocyanates related asthma and for that purpose we refer individuals to one of three centres in the province where they are tested for high sensitivity reaction. Both tests are pretty accurate but they are not absolutely 100 percent. If we get an individual where we have a strong history that is suggestive of isocyanates related asthma but they negative on the special test carried out in the centre, they are the most difficult individuals because we do not have a clear diagnosis of an occupational disease.

Mr. Wildman: Excuse me, could you tell me where the centres are?

Dr. Kaegi: Yes, we have one in McMaster and two in Toronto.

What we do with those cases is try and establish how severe the individual's asthma is that arises in the workplace. If it is mild and if we have some confidence of those medical supervision in the workplace or very easy access to medical supervision then we might recommend that the individual return to the workplace so that we can monitor them more closely and see what happens because that ends up being our only way of establishing the diagnosis.

(R-1730-1 follows)



(Dr. Kaegi)

...easy access to medical supervision, then we might be able to let them work in their workplace so that we can monitor them more closely and see what happens. That ends up being our only way of establishing the diagnosis.

1730

If the individual's accident is severe, we would not ever have them return to an exposure environment. We would rather have to develop some other methods or possibly just take it on a benefit of doubt situation. If the individual is established as have isocyanate-related asthma and cannot return to his preaccident employer because his preaccident employer has no work for the individual that is a nonexposed environment, we do continue to pay benefits and we embark on a vocational rehabilitation program for such an individual to assist them to find other work.

Mr. Wildman: I appreciate the answer. I do not want to make this too complex, but I will give you an example. I have a worker in my constituency who works for something like 14 years as a body man in an autobody shop, an active person who is now in his 50s and who is now suffering from asthma. As you quite correctly indicated, the problem is diagnosis. He has never had any respiratory problems before and now he cannot return to his workplace. Yet, this individual has not been referred to any of those three centres you referred to.

He has been tested in Sault Ste. Marie and the tests have not brought about the results that would be acceptable to the board in determining isocyanates-related asthma. My question is, how does an injured worker, who cannot return to work, first, get referred to one of those three centres, and what on earth does this guy do at 50 some years old, 55, I think, who wants to work and cannot.

Dr. Kaegi: It is hard for me to comment on a particular case without knowing the information, but I would be pleased to have that case looked into for you.

Mr. Wildman: I understand that response and I respect it. We do have a tendency, whenever the Workers' Compensation Board comes before the committee, for individual members to bring forward examples, and to have the response given, "Well, I will look into that particular case," and I appreciate that, but I am trying to raise this, not only on behalf of ??Lawrie Makkonnen, who is the injured worker I am referring to, but also in the general context of sensitivity to a substance in the workplace. Something like isocyanates, as you will agree, affects each individual very differently. Some individuals can, apparently, work with this kind of a substance and not have a reaction. Another individual can have a hypersensitive reaction. So that is where the diagnosis is a problem.

I would like to know, in the general sense, what is the board's policy, how do you deal with somebody who is not disabled in the sense that he cannot do any kind of work, but who cannot return to a particular kind of work that he or she has been doing for a long time. You said that he will be rehabilitated, but what happens if you do not get to the point of actually having a diagnosis where you have accepted? This guy, just because the board does not accept that he has is now sensitive to isocyanates, is not going to go back into that workplace. He is not crazy, yet he is not at the point where

Mr. Wildman

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you are prepared to give him rehabilitation.

Dr. Kaegi: Perhaps there are two points that I can respond to there. One is, as Dr. Elgie said in his presentation, the board has recently established an occupational disease department with the intent of bringing to bear on these sorts of cases, which are very complex, as you have pointed out, a higher level of technical and scientific expertise. We are currently developing referral criteria so that individuals who are seen in regional offices and n ISUs, whether their situation is complex, will get referred to the group where that sort of expertise is available, and thus get the expert referrals that you have mentioned.

The other point that you have raised, and I think, a very important one, is that there are many individuals in our workplaces who, because of some other personal condition that has developed, are not able to return to work. An individual who develops nonoccupational asthma, frequently cannot return to work in a dusty environment and that is a dilemma that we face in our system, our overall community system. Within the board our obligation is to establish that the individual has either an occupational disease, which we can . . .

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om
(Dr. Kaegi)

~~... in a busy environment, and that is a dilemma that we face in our system, our overall community system.~~

~~Within the board, our obligation is to establish that the individual is either an occupational disease, which we can diagnose, or a clear precursor or occupational disease, and we endeavour to do that because once we can do that, we are able to bring the services of the board to bear on the problems of the individual worker.~~

Mr. Wildman: I appreciate that. One other matter I would like to raise, but I just will say in that regard that it does tend to put the worker in an untenable situation in that he knows, for instance, if he were to return to the workplace, and develop an even more serious condition, at some point or other he might be diagnosed and then he would have the board services to assist him, but he does not want to risk his health in that way.

The other matter I wanted to raise is related to NEER, the new experimental experience rating system. I have raised this before and, Miss Chairman, you will know that the responses of the board officials has been that they consulted with the industry, and I am talking about the forestry industry and the logging industry in this case, has indicated that they support this system and they like it. I have never found one small jobber, contractor, logger anywhere who even knows what NEER stands for, much less was consulted. I do not know who you consulted with but it must have been people like Abitibi and E.B. Eddy and Great Lakes Forest Products, the big guys, because you sure did not consult with the little guys, and they are the guys who are getting hurt.

I would like to give an example: It seems to me a very simplistic way of looking at it, if you have 2,000 or 3,000 people working for you and you have a couple of accidents, the result of NEER is very different than if you have four guys working for you and you have a couple of accidents. As you know, in the logging industry and in the forestry industry, the incidents of accidents is high and it is quite unpredictable. You are working on unsafe ground, on uneven ground and in difficult weather conditions, at times, in the wintertime and so on, with a high risk of accidents.

I would like to know who you consulted with first and what on earth you are doing so that the small jobber, the small logger is not going to be put out of business by this operation.

Dr. Wolfson: Let me deal with each of those points and start with the second, if I might, what are we doing to try and avoid undue hardship to the small operator from one or two accidents that may have a large impact on his accident cost position. The experimental experience rating program has undergone, I think, three revisions since its inception four years ago. The major thrust of those revisions has been to deal precisely with that problem of exposure of small firms to large surcharges.

In the latest version, a small operator would have a very much more muted exposure than a large operator so, for example, as I recall it, for small firms, only about 15 per cent of the costs of an accident are counted towards the experience rating surcharge or rebate record of the firm, whereas, for a large firm, it might be 85 per cent of the total cost. There is a sliding scale that does reflect the ability of the large firm to absorb those kinds of assessment rate increases in a way that a small operator could not.

Dr. Wolfson

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So this is part of the experimental program as it evolves that really has taken note of that serious problem. I am not sure it is perfect yet, but there have been, as I say, three adjustments to the program to try and cope precisely with that issue.

Turning to question of consultation, the experimental experience rating program started out in the forest products area, it was the pilot project, if you like three years ago, I believe, and one of the things we learned from that experience as an organization, is that consultation has to be done much more comprehensively than it was done in that case. So for new programs that are being mounted, there is . . .

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(Dr. Wolfson)

~~an organization is that consultation had to be done much more
comprehensively than it was done at that time.~~

1740

~~new programs that are being mounted~~ there is not only extensive consultation through the formation of an industry committee, but in fact all employers in a rate group are notified about the possibility of an experience-rating program being introduced in their rate group and are given an opportunity to voice either support or objection for it before the program is mounted.

In the case of the forest products experience-rating program, the board, I believe, at the time relied very extensively on the good offices of not only the Ontario Forest Industries Association, but the ??Ontario Forest Products Safety Association, to liaise with the community—

Mr. Wildman: The big guys.

Dr. Wolfson: —and to communicate the intention to mount the program. In retrospect, as you say, Mr. Wildman, that was a consultation program that did canvas large operators and did not sufficiently make small logging operations aware of the intention or the implications of the board's program.

What the board has done over the last 18 months to try to rectify that situation has been to conduct a very large number of meetings with a large number of small operators. I have attended two or three of them. They have all been very interesting experiences, not always amicable.

Mr. Wildman: I am sure they would be. Those guys express themselves quite well. It is sure ??uplifting.

Dr. Wolfson: When the chainsaws get revved up, you know, it becomes an animated discussion.

The staff of the board have conducted such meetings all over the northwest part of the province, Hearst, Atikokan, Kenora, Dryden, as well as in the Ottawa Valley. We are trying, through that mechanism, to institute much wider consultation and better communication with that community.

Mr. Wildman: OK. I will not prolong this. I just want to put one example before you. This is Robert Martson ??Logging north of Sault Ste. Marie. He has four guys working for him. One of them, his son, had an accident in 1986. No lost time, just medical. He had to pay a surcharge of \$866.74 to that. In 1987, one of his other employees had a very serious accident and has had long-time lost time. He has been off ever since. He had to pay a surcharge of \$19,316 in 1987.

You can imagine that a charge of almost \$20,000 for a small operation like this basically puts him in a very difficult position. So he says to himself, "Maybe I should downgrade my operation and lay off some of my employees because I cannot afford to pay this," but then he says, "I am going to be penalized if I do that because then if I have an accident with only one or two employees, I am going to get an even bigger surcharge." Right now, he

Mr. Wildman

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is considering going out of business.

Dr. Wolfson: I think under the new program it is not the case that if he were to downsize, he would get an even bigger surcharge and that may be one aspect of the program that needs to be better communicated and better understood.

But if I may just add one point. It was because of this particular problem in the forest products area, as well as some other major workers' compensation-related issues that were vexing that industry that the board did strike a two-person task force last year with Cliff Pilkey, the former president of the Ontario Federation of Labour, and Jack Biddell, the former chairman of Clarkson ??Co., to inquire into the relationship of the board to the forest products industry and to report to us. They will be dealing with the impact of ?? on that industry, as well as other issues.

Mr. Wildman: The other problem they have is retroactive ratings. I mean how can you plan ahead if you do not know what you are going to end up payment? In 1987, this guy paid \$61,000 and basically wiped out his profit for the year.

Mr. Chairman: Can we go to Mr. Miller?

Mr. Miller: Yes. I would just like to follow maybe along the same lines. We have made a lot of progress I believe in the report and answers you gave us—

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Mr. Miller: ~~I would just like to follow up on the report that we have made a lot of progress. I believe in the report and the answers you~~ today. I was impressed with that, but one of the largest groups that we had to deal with was the injured workers groups and how they get a fair return through the reviewing of the policies of workers' compensation. I guess the second one related to that was the Council of Ontario Construction Association was the cost and the deficits that we are working under within the whole Workers' Compensation Board.

Mr. Wildman made a point about the loggers, but again what about the farming community? I am not sure how many you service through workers' compensation. ??I do not know whether you have that figure or not. I do not think it is a great number, but I could be wrong. Should they not be eligible for that kind of coverage, the same as the logger in the north or the small employer wherever in Ontario?

The other thing is 42 employers appealed—

Mr. Chairman: ??Appeal board?

Mr. Miller: The appeal board, yes. I can see a whole compensation taking place in the system, which is costing us dollars and not giving the dollars out where they belong. I wonder if your policy...is that an advisory committee that is going to make some recommendations how to make this work more effectively? Is that a function of that advisory committee?

Dr. Elgie: No. The policy advisory groups that Henry McDonald is setting up is simply to be sure that there is a good group of people who are representative to bounce ideas off and to get some advice about further consultations that should be held about policy issues. Any change of the sort you are talking about is a structural change that I think probably would need to be looked at by the Legislature.

But if I could go back to some of the other things you have talked about, coverage of farmers, it is my clear understanding that farmers are covered and have been since 1967.

Mr. Miller: I know they are covered, but how many are participating?

Interjection.

Mr. Miller: What percentage of the farming community is utilizing it?

Dr. Elgie: I do not have any data on that. I do not have that information. I can get it for you. I do not think it is voluntary. They are covered now. Since 1967 they have been covered, but I will get the exact details for you.

Mr. Wildman: The employer is voluntary.

Dr. Elgie: Pardon?

Mr. Wildman: Is the employer not voluntary?

Dr. Elgie: You mean if the farmer is an employer?

Mr. Wildman: Like he is the employer. He can cover himself or not cover himself.

Dr. Elgie: That is right.

Mr. Miller: I suppose that is maybe the one that I am referring to.

Dr. Elgie: If he does not have any--

Mr. Wildman: Yes. His employees are covered, but in terms of himself....

Mr. Chairman: There were a number of questions that Mr. Miller had.

Dr. Elgie: And COCA, I gather, I have not read their presentation, ?? relate to the high costs of compensation.

Mr. Miller: And the deficit that we are--

Mr. Chairman: The unfunded liability.


Mr. Miller: the unfunded liabilities, yes.

Dr. Elgie: There is no doubt that the unfunded liability hangs like a sword of Damocles that troubles all of us, but I hope, although COCA and others may not like the process that took place, they will agree that since 1984 we have had an amortization plan in place, which called for three fairly significant increases in the years 1985, 1986 and 1987. Then in 1988, that is this year, we have seen a fairly significant drop in the average assessment rate increases, dropping from something in the 13 per cent to 14 per cent range down to 4.9 per cent for this year.

For the first three years there is no argument. It caused quite a heavy burden on employers. We are now seeing the trailing off of the need for those large rates, but the unfunded liability did require the addition of 50 cents to the assessment rate on average and a decision was made to phase that in rather than to apply it as one single chunk of money, which would have required something like a 45 per cent increase in one year.

We believe we are on track. We also believe that in nominal dollars, not in real dollars, that we start to turn the corner in 1990 to 1991 and we start to tail down. Now, you will still meet people who say, "My costs are going to up," and that is true. In nominal dollars they are, but in real dollars it starts to taper off and about the year 2013 or 2014 it drops dramatically. At least there is a process in place, which deals with the issue. ~~I think that soon understands that, but we still hear and I think~~

R-1750 follows



(Dr. Elgie)

... ~~unpredictably. So at least there is a process in place which deals~~
~~with the issue~~, and I know the ??Council of Ontario Construction Associations
understands that, but it we are still hear—and I think understandably—from
employers who see this as a heavy burden to carry.

1750

You asked about injured workers. It is our belief that the changes we
have instituted internally will provide workers with a less cumbersome process
to go through, and it is our belief that the policy development process that
is just now commencing will provide us with sounder policies so that we hope
it will be less likely that they be subjected to appeal. This is all going to
take time and I think that the net result will be a better workers'
compensation system in line with the historical purpose of it, that justice
and humanity will be expeditiously delivered.

Does that mean that the compensation system is or will be perfect? No.
Significant flaws remain in the system, which were pointed out in several
reports that have been done in reviewing compensation in this province.

Mr. Miller: I have just one final question. Has there been any
review of tying the workers' compensation with the pension plan. Canada
pension plan; I think that is already in place, but with the pension plan that
maybe the employees are carrying themselves; so if your health goes bad at 50,
you can cut into that pension and a person at least can make a fair living
without going through the hassle. I guess what really concerns me is the
hassle that we have, the appeals and having to justify you are sick or injured
enough or that your back is bad enough that you can apply.

It just does not make sense to me that we should be spending money—it
makes more sense to me to be reviewing to tie it into a pension plan so that
it can be simplified and without all the legal hassle and to get a liveable
wage when you get into that position.

Dr. Elgie: At the present time it is not tied into any pension
arrangement. Someone who is on a permanent partial disability, for example,
and who is found for other purposes, other than the compensation system
purposes, to be totally disabled can still apply for CPP disability.

Mr. Miller: That is the pension plan I ??am referring to.

Dr. Elgie: I am not recommending that, but I am saying that does
take place.

Mr. Chairman: Sounds to me as if you are flirting with that
universal sickness and accident system—

Dr. Elgie: Maybe you and the chairman would like to—

Mr. Chairman: Go to New Zealand.

Dr. Elgie: Go to New Zealand to assess the program.

Mr. Chairman: Anything else, Mr. Miller?

Mr. Miller: Fine. Thank you.

Mrs. Marland: Is it appropriate for me to return to my original question?

Mr. Chairman: Absolutely.

Mrs. Marland: I have a letter here from the emergency task force on chiropractic practice in health care institutions, which I guess is generated from the physiotherapists—

Dr. Elgie: I have not read that.

Mrs. Marland: The letter is dated November 20, 1986. It says: "Recently an agreement has been signed between the Workers' Compensation Board and the Ontario Chiropractic Association to provide chiropractic services at the Downsview Rehabilitation Centre commencing January 1987.

??"The physiotherapists at the centre feel that this decision has far-reaching ramifications for all physiotherapists both professionally and politically."

The reason I read that letter, Dr. Elgie, is that it seems to me that everybody is vying to look after the injured workers. What happens is that there are politics that get into it which I think are totally inappropriate, in my humble opinion. I think what all of us are concerned about—and I do not question the commitment of the WCB—is the protection and interests and the fastest remedy for an injured worker's injury so that he is back to complete health. Here is another group which is complaining about the politics of what goes on at the WCB.

The chiropractors were here complaining that physiotherapists were doing manipulation for which they are not trained to the extent that chiropractors are. ~~Physiotherapists~~

R1755 follows

(Mrs. Marland)

~~... complaining that physiotherapists were doing manipulations and that they~~
are not trained to the extent that chiropractors are. Physiotherapists study manipulation. They do not study the medicine; they do not study the body the way chiropractors do. It is an entirely different training. Physiotherapists are very highly skilled, specialized people in their field, but it is a different thing totally from the practice of chiropractic medicine.

My feeling is that there is some question about the commitment, in spite of your answer, and I listened carefully to it. There is some question about why the Workers' Compensation Board will not do a comparative study on the costs and the remedy for those injuries to workers when we know from the figures that have been presented to us here in the last month that the highest percentage are back injuries, and the longest duration of not being able to return to work for those injured workers is because of back injuries.

Yet, other than the remedy of surgery, obviously chiropractic medicine can play a very real role. The question is, if that role can be played by providing chiropractic treatment—the remedy is there. It is a lower cost to the employer. The injury that is sustained by the individual can have a fast remedy. Why has the WCB, as we have been told, been reluctant to make a comparison of those costs?

Dr. Elgie: It is difficult to expand in any greater detail than I have expect to say that the proposal to do something at Downsview in this area was postponed or delayed or cancelled when the Downsview team, the recommendations, came in. You either accept that or you do not. I am just telling you.

In terms of this board and this province recognizing the role of chiropractic, spinal manipulation, old Hippocrates would roll over in his grave if we thought it was something new; it has been around since his day, and that spinal manipulation might not have a place is just not accurate. Chiropractors receive compensation for services rendered to injured workers and injured workers have a choice about going to chiropractors, just as they have a choice about going to a physician. Really, it is not quite accurate to suggest there is something strange going on.

There is a lot of research going on in the medical and orthopaedic community about back problems, which you may be aware of. In general, society is moving away from surgery and more and more into nonsurgical treatment of back problems. Dr. Alf ??Nacomssen in Sweden, along with others, have done very extensive and good research in this area, and we are now involved in some nine profile projects throughout the province on the ??Nacomssen Swedish techniques with respect to back rehabilitation and prevention of back problems and back pain in general, the early intervention in back pain. The board is involved in new proposals that have flowed from research like Dr. ??Nacomssen's and we have recognized there is a role for chiropractors to play and we compensate them.

Mrs. Marland: But you do not have chiropractors at Downsview.

Dr. Elgie: No.

Mrs. Marland: That is the question.

Mr. Chairman: Can we make this the last question?

Ms. Collins: I will make it very short. I just want to pursue that a little further. I heard your response and I understand what you are saying. However, the staff at WCB have been sending letters out to clients which indicate a certain bias, I think, and I have copies of letters here. One is from an N. Savelli at the Hamilton regional office. In the letter she states: ?? "The maximum benefit of chiropractic treatment is achieved within the first six weeks." I think chiropractors are arguing it is unfair to put a six-week limit on treatment when you do not do that with a lot of others.

Mr. Wildman: They see that as arbitrary.


Ms. Collins: That is right.

~~Dr. Light, Dr. King, would you comment on this?~~

~~Ms. Collins: Perhaps I could just go through this very quickly.~~

~~There is another letter from a claims adjudicator at the board and I have the claimant here which I will just read.~~

R1800 follows



(Ms. Collins)

...that ~~the board has decided to~~ ~~the board has decided to~~

1800

Dr. Elgie: Dr. Kaegi, would you comment on that, please?

Ms. Collins: Perhaps I can just go just go through this very quickly. This is another letter from a claims adjudicator at the board and he names the claimant here, which I will not do, but ?? "...if the claimant is still having a problem, she should consult her general practitioner and have a copy of the report forwarded to the board."

Now again, this letter went to the chiropractor, rather than—assuming that the chiropractor is a professional and would know when to refer the patient to a specialist.

The next letter is to a claimant from a medical advisor in the claims section. ?? "I have advised that the accounts should be allowed." This is in regards to a patient. "However, the board does not like to have knee injuries treated by a chiropractor."

There just seems to be this bias ??towards chiropractors, or this prejudice ??towards chiropractic treatment. I think that is the point the association is trying to make with the board.

Elgie: If the issue is that there are time limits, that may be so. There are time limits in a number of areas. For instance, our early intervention pilot projects have strict time limits on them, but those time limits are subject to renewal and I understand that, in many cases, there is a renewal.

But, Dr. Kaegi, you may want to comment on the broader range, because I have not heard any of this before.

Dr. Kaegi: I think, with respect to the six-week limit, we do have a control procedure that does look at individuals at the six-week limit. If there is a case to be made by the chiropractor for that to be extended, that is also considered in the same way that it is for many other people, where there is also a time limit.

One of the papers that the chiropractors use quite often, and I know they have given you a copy of it, is the paper written by the orthopaedic surgeon, Dr. Kirkaldy-Willis in Saskatchewan.

If you notice in that study, Dr. Kirkaldy-Willis, whom we have also had come down to speak to our Downsview staff, points out that most individuals with back pain do best with two to three weeks of daily chiropractic. So he, too, is calling for short, intensive types of treatment, rather than treatment drawn out over many, many weeks. That is an area to which we would like to progress and we are working to that end with the Ontario Chiropractic Association.

With respect to some of the other comments, on staff ??fires, I cannot respond to all of those questions, but I would like to pick up the comment

Dr. Kaegi

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about the Downsview physiotherapists objecting to the thought of a research project involving chiropractic at the centre. That is absolutely correct. The physiotherapists, when we first developed that project, were very concerned about it. I met with them extensively and, in fact, that issue was resolved and they were willing to participate in it on a research basis. We had a physiotherapist identified on the advisory committee who was going to help with the research evaluation.

I think I can say, for the staff there, that they got over their initial concern about that project and were willing to co-operate with it. That was not the reason—

Mr. Wildman: Was there a chiropractor on the—

Dr. Kaegi: Absolutely. We had identified both those individuals.

Mrs. Marland: The research was done?

Dr. Kaegi: No, the research was not done. We were in place, ready to go with that research with the staff at Downsview on side with it, with the chiropractors on side with it, when the whole thing came to a halt because of the complete review of the delivery of service at Downsview, as the chairman has referred to it.

But that letter did—I mean, that is absolutely correct, but that issue was completely resolved.

Mr. Chairman: I think we are going to have to call this to a halt because of the time. There were a number of requests made by the committee of the board. One was a list of the doctors and their specialization. The second was a list of the asbestos-related diseases that have been referred to the ??disease standards panel. The third was Mr. Miller's request on the farmers and statistics on farmers from the Workers' Compensation Board. The other one was the one on subsection 45(5), where we were assured that we would receive the brief that went, I think, to the Workers' Compensation Appeal Tribunal from the board.

But we would also appreciate the legal opinion on which policy concerning subsection 45(5) was changed. I am sure that the committee would like to have that, so we can see the kind of thinking that went into the policy change. I do not think that is an unreasonable request.

Is there anything else that I have missed?

Dr. Elgie: What was the first item?

Mr. Chairman: The first item was the list of doctors and their specializations.

Dr. Elgie: But you also wanted to know where it was published?

Mr. Chairman: Right. OK. Is there anything else? Then, tomorrow we will meet in committee room 1, in camera, because we are dealing with the mining accident report and we will talk a little bit about our agenda at that point, too.

↓
(1805 follows)

(Mr. Chairman)

~~...mining accident report. He will talk a little bit about an agreement that~~

Thank you, Dr. Elgie, Dr. Wolfson and the rest of your group for coming to the committee this afternoon.

~~The committee is adjourned.~~

The committee adjourned at 6:05 p.m.

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STANDING COMMITTEE ON RESOURCES DEVELOPMENT

ORGANIZATION

MINING SAFETY

ANNUAL REPORT, WORKERS' COMPENSATION BOARD, 1986

MONDAY, JUNE 27, 1988

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

CHAIRMAN: Laughren, Floyd (Nickel Belt NDP)

VICE-CHAIRMAN: Wildman, Bud (Algoma NDP)

Brown, Michael A. (Algoma-Manitoulin L)

Collins, Shirley (Wentworth East L)

Grier, Ruth A. (Etobicoke-Lakeshore NDP)

Leone, Laureano (Downsview L)

Marland, Margaret (Mississauga South PC)

McGuigan, James F. (Essex-Kent L)

Miclash, Frank (Kenora L)

Miller, Gordon I. (Norfolk L)

Wiseman, Douglas J. (Lanark-Renfrew PC)

Substitutions:

Black, Kenneth H. (Muskoka-Georgian Bay L) for Mr. Brown

Martel, Shelley (Sudbury East NDP) for Mrs. Grier

Pollock, Jim (Hastings-Peterborough PC) for Mr. Wiseman

Clerk: Decker, Todd

Clerk pro tem: Mellor, Lynn

Staff:

Madisso, Merike, Research Officer, Legislative Research Service

Luski, Lorraine, Research Officer, Legislative Research Service

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Monday, June 27, 1988

The committee met at 3:49 p.m. in room 228.

Mr. Chairman: The resources development committee will come to order. We were waiting for another party, but it is reaching a point in the afternoon when I do not think we should wait any longer.

There are a number of things to discuss this afternoon: (1) the committee schedule for the summer; (2) the release of the mining accident report; (3) the recommendations on the Workers' Compensation Board review. Does anything else come to mind? OK.

ORGANIZATION

Mr. Chairman: On the committee schedule, because there are some people here in the audience from the truckers' association who would like to know, I suspect—

Interjection: We are from the shippers' association.

Mr. Chairman: Shippers. OK. Not to be confused with truckers.

The whips met last week and gave us the three weeks only. Committee members may recall that a request went in for another couple of weeks. They could not reach a consensus, so we are left with the three weeks that were originally allocated to us, namely, the weeks of August 22, August 29 and September 12.

I think that members were in agreement last time that it would take those three weeks to deal with the trucking bills. It was the consensus of the committee that to try to do those bills in any less than three weeks simply would not work because there has to be at least a certain amount of moving about the province to hold a couple of hearings.

If there is agreement among the committee members we could—not immediately—but we could start the wheels moving on notifying interest groups that those are the weeks, and then try to make up our minds on where we go, when we go there and so forth.

I think most of you know that Lynn Mellor will be the clerk of the committee after the end of June, as Todd moves on to smaller and worse things. We welcome Lynn to the committee.

Those are the weeks of August 22, August 29 and September 12. The week in between is when none of the caucuses are sitting because of caucus meetings. If there is no problem with members of the committee, we will set about arranging those three weeks. Does anybody have any problems with that? I do not think there is anything very complicated here.

Mrs. Marland: Which three weeks are they?

Mr. Chairman: The weeks of August 22, August 29 and September 12.

I am sure that all caucuses will be substituting people, so that is no problem. Those are the weeks that we have, so I think we should make the best of them.

Mr. Wildman: Will we be sitting three days a week?

Mr. Chairman: I hope so, unless there is some crunch.

Mr. Wildman: Tuesdays, Wednesdays and Thursdays.

Mr. Chairman: Are there any problems with that? I think I still have the list with me somewhere of groups which appeared the last time, so we know who most of the interested parties are on the trucking bills.

Mrs. Marland: Since I have to represent our caucus here, I had better be clear. Are we talking about only three weeks in total now, whereas before we were talking about six weeks?

Mr. Chairman: We had sent in the original request for six weeks. It came back from the whips with three weeks on it. The committee collectively decided to ask for two more weeks for a total of five because there was talk about dealing with private bills. The response came back from the whips with no consensus, and therefore you are left with three weeks.

Mrs. Marland: So it is the last two weeks of August and the week of September 12.

Mr. Chairman: Yes. We will try to keep it to Tuesdays, Wednesdays and Thursdays, unless something changes.

Mrs. Marland: Are we deciding today how we are splitting up those three weeks among the matters that are referred to us?

Mr. Chairman: I would not be able to do that. Unless somebody has some suggestions, I do not think—

Mrs. Marland: Have we already decided in what sequence we are dealing with the matters?

Mr. Chairman: No.

Mrs. Marland: I think the committee should have that prerogative. Since the other member of this committee from my caucus is not here as often as he would like to be, is that something we could discuss today?

Mr. Chairman: It is hard to discuss today when we do not have—at least I do not have the material in front of us. May I suggest that at our working supper meeting on Wednesday we discuss that?

Mrs. Marland: I will not be here. I mean that is just going to be too bad.

Mr. Miller: Did we not have a steering committee to direct these things?

Mr. Chairman: Yes, we did at one time.

Mr. Miller: Did you not have somebody on that steering committee?

Mrs. Marland: Yes, me.

Mr. Chairman: What is it you are trying to get at here, Margaret?

Mrs. Marland: I am trying to get at the fact that I will not be with the committee on Wednesday night. Obviously we have to have somebody from our caucus as part of this decision, somebody who has some of the background to the discussion that has gone on about the matters that have been referred to this committee and how we are going to prioritize the sequence of what we deal with.

That is an important decision for the committee. It is difficult enough, I guess, with six government members, but we still would like to be part of the process.

Mr. Chairman: You are talking only about the trucking bills, right?

Mrs. Marland: Do we not have another bill?

Mr. Chairman: No.

Mrs. Marland: I thought we had Mrs. Grier's environmental rights bill.

Mr. Chairman: Maybe you were not here right at the beginning and that is what is confusing you. The committee decided that regardless of how many weeks we got—correct me if I am wrong here, any members of the committee—that three weeks was going to go to the study of the trucking bills, with some public hearings and clause-by-clause consideration.

I think it was the clear agreement of the committee that if we did not get any more weeks than three, then that is all we would deal with. Therefore, both Mr. Pollock's bill and Mrs. Grier's bill would go down the tube, if I can put it in a parliamentary way.

Mrs. Marland: What happened to the resolution that we took on Mrs. Grier's bill the day she was here?

Mr. Chairman: That was a motion that was tabled or deferred until last week.

Mrs. Marland: That is right. That is what I thought. Now it so happens that, as a member of this committee, I think the trucking bills are very important to this province in that particular subject area. It also happens that, as the Environment critic for our caucus, I think that Mrs. Grier's environmental rights bill is important to the future of this province, or else we will not have any province to truck through.

I remember the meeting that was rather difficult. Mrs. Grier was here and Mr. Wildman was here. Right now, I am the only spokesman for either of the opposition parties at this moment. I know we made a decision that we would defer the scheduling until we had all those matters which were to be the responsibility of this committee to pursue over the summer. Now if it is the two trucking bills—is there anything else, Todd?

Clerk of the Committee: Mr. Pollock's Bill 67 and Mrs. Grier's Bill

Mrs. Marland: Which is Bill 67?

Clerk of the Committee: An Act to establish the East/Central Ontario Recreational Trails Commission.

Interjection.

Mrs. Marland: Right, and he came in that day to discuss that too. I just did not remember what the bill number was. Then I have to ask, when is the time, if not today when we are discussing the summer schedule, that we take the motion that was tabled back on to the table?

Mr. Chairman: I have no problem dealing with that today, if that is what members want to do. In view of the fact that you will not be here Wednesday and the committee does not sit tomorrow, I have no problem if the committee wants to deal with that.

The exact motion that was put by Mr. Wildman, I think, was that when the committee meets during the summer adjournment, Bill 13, Mrs. Grier's bill, will be the first item considered. So that is the motion that will be before the committee, which the committee will presumably debate and vote on this afternoon. Is that what you would like to do? It will get it out of the way then as well.

Mrs. Marland: Yes. I think, in fairness, that if we are going to have a vote on that matter, we have to advise Mrs. Grier and Mr. Wildman who are both members of the committee. I will be at a disadvantage because I cannot get a substitute for the other member from my caucus, because you have to know who the sub is half an hour before the meeting starts. Is that right?

Mr. Chairman: Within the first half hour.

Mrs. Marland: Which we are just within, so if we get you a sub slip—what does anybody else think? Obviously there is a process here, and it seems to me that it has to be dealt with because that was the decision we made.

1600

Ms. Collins: We know that we only have the three weeks and we know it is going to take that long to deal with the trucking bills. On the other hand, Mrs. Grier said it would take two weeks for her environmental bill and Mr. Pollock said two weeks for his private member's bill.

Mr. Chairman: To be fair, he said one.

Ms. Collins: Two days, I think he said. Obviously, it is a choice between the trucking bills or the two private members' bills. If you want to take the vote on it today, I think we are quite prepared to do that.

Mrs. Marland: I am not so naïve as not to understand how the vote is going to go, but I think the record has to show what is going on in the committee. Unfortunately, Mrs. Grier did say it would probably take two weeks—Shirley, you are perfectly right—but then she corrected it and said: "I will take a week. I will be happy with a week," which means three days. The Hansard will show that.

Mr. Chairman: She said a week of public hearings and then we could do clause-by-clause later when the House came back. So you are quite right.

Mrs. Marland: I guess this is the problem with quasi-informal

agendas, which is what we are into right at this moment. I have to run now and get a sub, and also the clerk has to inform the other two members. Although this was not announced ahead of time as being an item on the agenda, they now can receive notice from the clerk, I suppose, under the procedural orders.

Mr. McGuigan: On a point of order, Mr. Chairman: Does the resolution defer or does it lay on the table?

Mr. Chairman: I do not know. The motion that was tabled—

Mr. McGuigan: And anyone can have it lifted from the table.

Mr. Chairman: But there was an agreement that it would be dealt with the last week of the session.

Mr. Miller: That is right, when we knew what was going on.

Mr. Chairman: This week. I think Mrs. Marland has a good point, that this would be a better day to deal with it than Wednesday. If the committee wants, Mrs. Marland, you could just scribble out a substitution. We do not need to be unduly formal on that, I hope, to have a substitute member here. Then if you want to adjourn for 20 minutes to get people in here, that is fine as well.

Mrs. Marland: I have to go and phone the caucus to find what name I am to scribble out.

Mr. Chairman: Is there any further debate at this point on the agenda this afternoon?

Mrs. Marland: That we deal with those motions is fine with me.

Mr. Chairman: Can we also agree to take a final look at the mining safety report, which has already been to the committee once, and second, to give Merike some instructions on the Workers' Compensation Board review? We cannot just cut her adrift.

While Mrs. Marland is arranging her affairs, so to speak, perhaps we could take a look at the mining safety report.

MINING SAFETY

Mr. Chairman: You have before you the final report on mining safety. Since I was not here last week, is there any need to go through this page by page? I do not think so, is there?

Ms. Collins: I do not think so. We made a couple of small revisions around the bonus system. If you want to review that recommendation, we could do that. It is very short.

Mr. Chairman: What recommendation?

Ms. Collins: On the bonus system, to make sure that it is in accordance with what the committee wanted.

Mr. Chairman: What page is that?

Ms. Collins: I think it is on page 54 or 55.

Mr. Chairman: Page 53, production bonus.

Ms. Collins: On page 56.

Mr. Chairman: Page 56? OK. Any problems with that? All right.

Is there anything else in the actual body of the report? If not, there is the question of the size of the report. We had discussed early on about having a lean and mean report, as the right-wingers are wont to say about all things in our society. This is pretty thick, even though it is written on both sides of the paper. What would the committee think about separating the appendix from the final report? Second, in the "Recommendations of Other Reports," I noticed something I did not understand. There are actually comments of the committee on it and I wonder if that is appropriate when it is is an appendix? Do you understand what I am saying? There is a good example.

Mr. McGuigan: I have a problem with the reference to right wing. I think our report is anything but right wing.

Mr. Chairman: No, I did not mean the report was right wing. It is an expression right wingers use—"lean and mean"—all the time.

Mr. McGuigan: I know what you meant.

Mr. Chairman: OK. You cleared it up.

Would you look on Page 40 of the appendix, "Mining Health Safety (inaudible) Ministry of Labour: Safety in Ontario Mines." You look on page 40 and you see recommendation 30—

Ms. Luski: These are not our comments. Turn to page 42.

Mr. Chairman: These are not our comments.

Page 42: You will see "Recommendation: accident and injuries, reporting of injury statistics," and then across to the right-hand side, that is the Ministry of Labour's comments. On the left-hand side, at the bottom, you will see, "Committee response, section 54," and I was startled to see that because I wonder about putting committee responses in an appendix that really is there for information on what somebody else has done. That is my only concern. I do not know the proper protocol on something like this, but it bothered me.

Ms. Madisso: How is the appendix labelled?

Mr. Chairman: Under appendix A.

Ms. Madisso: But does the title include (inaudible) with committee response or not?

Ms. Luski: Yes.

Mr. Chairman: Well, this does, but the actual covering sheet is from the Ministry of Labour.

Ms. Luski: In the report there is reference to that. If you turn to page 25 —

Mr. Chairman: Of the report?

Ms. Luski: Of the report, under "Previous Commissions of Inquiry." In the last paragraph, it is clarified that the Ministry of Labour has provided the detailed list of recommendations and the committee reviewed the recommendations and identified those that have not been addressed, which is what I understood.

Mr. Chairman: Do the members understand what I am saying here? It has got me uneasy about attaching comments basically right on to somebody else's recommendations.

Ms. Collins: Mr. Chairman, I tend to agree with you. I understood we were going to list the recommendations of the former commissions and then the status of those recommendations. Where the committee did not agree with them, that would be included in the body of the report where we talked about the bonus system we did not agree with. I guess it was Burkett and his recommendation on bonus. It was covered in the full report and the appendix would only be outstanding recommendations, or all recommendations, and what had happened to them, whether they had been implemented, and if they had not been, why they had not been.

1610

Ms. Luski: Some of the outstanding recommendations are not covered in our report. What do we do with those, such as a review of first-aid injuries? There is no section in our report that deals with that. I understood from the committee earlier that it would be appropriate to put them all on the same page, but I can understand that may not be appropriate, having given the committee an opportunity to review that.

I am quite prepared to do whatever the committee wishes. I thought those were the instructions. I am prepared to insert—the only concern I have is that the committee needs to identify the outstanding recommendations and we have to slot them in somewhere. I thought it was appropriate to slot them in where they were addressed in the "Previous Commissions of Inquiry," both a detailed description of the recommendations and the response of the Ministry of Labour.

Ms. Collins: Are only the outstanding commission recommendations in the appendix?

Ms. Luski: All of them.

Ms. Collins: Only the outstanding ones, not the ones that have already been implemented. Is that correct?

Ms. Luski: No, all of them.

Ms. Collins: All of the recommendations are in there?

Ms. Luski: Yes.

Ms. Collins: On the ones that have not been implemented, do you have an answer from the Ministry of Labour or whichever group would have been responsible for that?

Mr. Chairman: The Ministry of Labour is responsible, is it not?

Ms. Luski: The Ministry of Labour has responded in some cases. I guess the parties could not agree, so the recommendation was not implemented. Then the committee, in its own judgement, has considered that recommendation and made a determination or decision about the recommendation, suggesting perhaps that the parties should implement it or not, if I am being clear.

Mr. Chairman: Does everybody understand that? We have all the recommendations, the Ministry of Labour's response to them and then the third section is the committee's response to them, right? That is the only part that makes me nervous. I do not mind at all the Ministry of Labour's response to them because that is the body responsible. What has me uneasy is attaching right on to that same page the committee's response in an appendix.

Ms. Collins: Mr. Chairman, would you be satisfied if we just left off the committee's remarks and left it as sort of a status report on the recommendations that are outstanding?

Mr. Chairman: That is a possibility.

Mr. Wildman: I like that idea.

Mr. Chairman: Does that pose a problem for you or for the report itself?

Ms. Luski: No, that is fine. Is it my understanding then that the committee will not comment on any of the outstanding recommendations, the 17 that have not been implemented?

Mr. Wildman: Not unless we are commenting on them in the body of the report.

Mr. Chairman: I think it is a bit strange if it is in the appendix. If we comment on them there, why did we not comment on them in the body of the report? It would be better just to have the status of them as viewed by the Ministry of Labour attached to our report.

Mr. McGuigan: I would just like to put forth my views on that. I kind of like this format in that you are not reading one section and then having to go back to another section and then having to go back to another section.

You have it all laid out for you here. I think we should more clearly identify, say on page 42, what these three things are so that the person opening to page 42 will have clearly identified that these comments regarding section 54 belong to so and so, and then the committee response belongs to another group. Personally, I kind of like it. It is only the very serious sort of research person who is going to go in here anyway. The real body is the first section. This is more academic and studious.

Mr. Chairman: As a matter of fact, the argument that could be made is you could put them in separate documents.

Mr. McGuigan: You could.

Mr. Wildman: I like that idea. If you were going to do it that way, you could have the main report and our recommendations in one booklet and the

other in a separate booklet as an addendum to it. That way, if some people who are not particularly interested in going into all the detail want to have a quick scan of what the committee did, they would have a smaller document that they could look at.

Mr. Chairman: Are we reaching a consensus here?

Mr. Leone: I do not see anything against having that in one report instead of two—trying to get information from one piece of the report to another one.

Mr. Chairman: Let's decide this issue in stages. Do we want the committee's comments on the recommendations included in the appendix?

Ms. Collins: Do we want the committee's recommendations?

Mr. Chairman: Do we want that left the way it is now?

Ms. Collins: No.

Mr. Chairman: Most people do not want it, I think. You could put it to a vote if you want but I do not think most people want it. Second, if we do not put the recommendations of the committee in the appendix, then we simply attach the appendix with the recommendations from the other commissions to the back of the report.

Mr. Wildman: And the ministry's reponse.

Mr. Chairman: And the ministry's response. Have the government members reached a consensus yet?

Mr. McGuigan: We are trying to get one.

Mr. Chairman: OK. For the benefit of Mr. Wildman who was not here and Mr. Pollock who was not here—

Mr. Wildman: And Mrs. Marland.

Mr. Chairman: OK. There was a decision made earlier to deal with the schedule of the committee.

Mr. McGuigan: I think we have some consensus.

Mr. Chairman: What is that?

Mr. McGuigan: Go with the way it is, perhaps a little more clearly identifying —

Mr. Chairman: The committee's recommendations?

Mr. McGuigan: Yes.

Ms. Luski: Currently, I have "Committee Response to Recommendation 54." Could you give me some direction about how I could make it more clear?

Mr. McGuigan: "The 1988 Committee," perhaps.

Ms. Luski: Or "Standing Committee on Resources Development Response"?

Mr. McGuigan: Yes.

Ms. Luski: Is that suitable to everybody?

Mr. Chairman: Can you live with that, Mr. Wildman?

Mr. Wildman: Sure.

Mr. McGuigan: You might even put "1988."

Interjections.

Mr. Chairman: In the appendix, page 42.

Mrs. Marland, can you live with that? I know you have been busy on other things. It is simply leaving the appendix the way it is now, only more clearly identifying the committee's comments on the problem.

Mrs. Marland: Yes; thank you.

Mr. Chairman: Page 42 of the appendix. All right. Is that a consensus?

Mr. Wildman: It is a consensus that we have it in there. I will not insist on this, but I prefer to have them as two separate documents.

Mr. Chairman: OK.

Mr. Wildman: The reason for that is just the ability to walk around with one of them. If you have somebody who is interested in looking at this, but just is not the studious type Jim talked about who wants to look at all of the material, I think it is a little thicker than it need be. If you have it in two separate documents and someone wants to look at the whole work of the committee, then you have it there. One is an addendum to the other report. But again, I will not insist on that.

1620

Mr. Chairman: Do you want to speak to that, Ms. Luski?

Ms. Luski: My only concern is that during the hearings so many workers had the perception that these recommendations had never been implemented. Attaching that document to the report is the proof that a number of them have been addressed.

Mr. Wildman: That is all right with me.

Mr. Chairman: The first time I saw the report it was on one side. I was horrified when I saw the thickness of this, but when you see it on two sides it is probably not as serious.

Any other comments on that? Is it agreed then that it is one report? Do I get a consensus or do I not? Agreed? OK.

Mr. Wildman: Wildman is the name; compromise is the game.

Mr. Chairman: Anything else on the mining safety report? The next question which perhaps we cannot resolve is, when do we release this report? When will any of these things we have suggested be ready?

Ms. Luski: They could be ready Wednesday.

Mr. Wildman: I do not want to be difficult. I know this cannot be done, but I do want to register for the record that I would have preferred it if we could have had this in two languages.

Mr. McGuigan: For the record, we all would.

Mr. Wildman: I understand the constraints of time.

Mrs. Marland: Are we going to do the joint release?

Mr. Chairman: That is a very difficult thing to arrange. The Legislature is sitting only Monday, Tuesday and Wednesday this week, we think; that is the present plan. With the Meech Lake debate involving so many people and with those votes that I know some of us simply cannot miss, it makes a trip back and forth virtually impossible this week.

That leaves a couple of options open. One is to table the report on Wednesday afternoon in the House and then do the actual three-party press conference in Sudbury on Thursday, for example, or you could pick a day next week, I suppose. The other possibility is to not table the report in the House this week, but to table it with the Clerk whenever we decide to have our press conference. The only problem with that is that I can see that as an opposition member, I would complain if the government did that, holding back a report until after the House had adjourned.

Mr. Wildman: I should not have mentioned translating, should I?

Mr. Chairman: The other possibility which the clerk has mentioned is that if the committee decides it wants the report translated, we could hold it until it is translated.

Mr. Wildman: That could be weeks.

Mr. Chairman: It would be indeed a couple of weeks, but it would be a legitimate delay.

Mr. Wildman: I think it would be more than two weeks.

Mr. Miller: Eventually, it will be translated. Eventually, it will be in both languages.

Mr. Chairman: Is that automatic?

Mr. Wildman: No, we have to decide that. If you are going to have it in two languages, you cannot table it until you have it in two languages.

Mr. Chairman: No?

Mr. Wildman: I do not think so.

Mr. Chairman: But it is not customary to have reports in the Legislature in two languages.

Mr. Wildman: The only reason I raised that before is because there is such a proportion of miners who are francophones. But I do not think it is practical, frankly. I think it will take more than two weeks. I think you are being quite optimistic if you think you can get this translated in two weeks.

Mr. Chairman: What is the feeling of the committee about tabling it on Wednesday and having a press conference on Thursday in Sudbury with all parties represented?

Ms. Collins: I agree with that.

Mr. Chairman: Anybody else?

Mrs. Marland: Good idea. Is there anybody—

Mr. Chairman: Can you get someone there from your caucus?

Mrs. Marland: That is what I was just wondering. We do not have a member. Well, I guess Mike Harris is the closest, but you are saying Thursday.

Mr. Chairman: It is close enough to the tabling that I think it can—

Mrs. Marland: Oh, it does. I think it is a good idea. It puts you there in person to answer questions. It is a good idea.

Mr. McGuigan: We are certainly—

Mr. Chairman: OK. Is there any problem with it? You sure would not want to be there without your caucus—we do not want to be criticized for not—

Mrs. Marland: No.

Mr. Wildman: The whole purpose of a press conference is to to allow the press to ask members of each party what their views are.

Mrs. Marland: That is right. I am out of the country, but maybe Todd or you could—I will speak to the caucus. Maybe you can follow it up.

Mr. Chairman: Doug Wiseman had agreed that if it was on Wednesday he could do it.

Mrs. Marland: Yes, but I cannot possibly answer for him. I have to phone the caucus office and find out.

Mr. Chairman: Can you let us know as soon as possible? And we will agree in principle to try to arrange this.

Mr. Wildman: What are you looking at, an afternoon press conference or a morning press conference?

Mr. Chairman: I would think to allow members to get up there we could do it in the early afternoon.

Mr. Wildman: You just want to make sure that when you are doing it, it also means that members can get back that day.

Mr. Chairman: Yes, we know that. There is a flight back at 5:30 or 6 p.m. People can fly up in the morning and be back here in Toronto by 6 or 7 p.m. Do you have the exact times?

Clerk of the Committee: No.

Mr. Chairman: We know we can get up there in the early afternoon and be back by supper or right around the supper hour.

Clerk of the Committee: It is flight 1210, arriving at 5:45 p.m.

Mr. Chairman: Yes, something like that, back before 6 p.m. or right around 6 p.m. All right? Each caucus can sort out its members, but let us know and Todd can go ahead and make the arrangements. All this assumes that we adjourn Wednesday night. It is a heroic assumption, I know.

That brings us then to the Workers' Compensation Board report. We will deal with it next.

ANNUAL REPORT, WORKERS' COMPENSATION BOARD, 1986

Mr. Chairman: Merike, I think most of us have not even had a chance to glance at this. Could you, without going through the pages of the report, just speak precisely to what you have done, what we have in our hands?

Ms. Madisso: Most of you are probably used to this format. We often produce them after public hearings. It is a collection of the recommendations that were put forward by the various groups that appeared, and occasionally something that arose simply during the course of discussion, listed under headings that I put together myself, so those can be changed if you do not like these particular topics. You will notice, unfortunately, that there is a miscellaneous section. I did not know what else to do with those. Perhaps you have some ideas on where they would better fit.

The big topics are covered that you heard about: supplements, rehabilitation, the Workers' Compensation Appeals Tribunal and, in particular, section 86n of the act. There is quite an extensive section on board procedures, various criticisms people made and recommendations for change. Another large section is on financing the system. Under that go assessments and related items.

Mr. Chairman: Without going into all of these, which could lead to a major debate, what do we do with this now that we have it? We are in the last throes of this session and there is no opportunity for the committee to actually write a report, though I hate like heck to see it just sit here and wither on the vine until next October. On the other hand, I do not know when we can meet to deal with it.

Mr. McGuigan: Can I ask something? It will take seconds, but it actually goes back to former matters. What about the confidentiality of this paper? All I am suggesting is that perhaps we should have them all gathered up. If we have them and they are leaked to the press, at least we can say, "Well, we don't have the report."

Mr. Chairman: Which one are you talking about? Mining?

Mr. McGuigan: Yes.

Mr. Chairman: Well, there are still changes to be made by Lorraine.

I think that so far members have not done any of that. There have been no slippages at all. I do not mind. We can collect them quite easily and then on Wednesday, when the collections have been made, we can distribute them all to members' offices as soon as we are done.

Mr. McGuigan: I think that is safer.

1630

Mr. Chairman: On this matter now of the WCB, Ms. Collins.

Ms. Collins: I am just wondering whether we should be considering the minister's proposed legislative changes on the WCB when we are looking at it with the issues that we have received, or do we go that far? If we just go ahead with the report as it is now, we are just assuming nothing changes. Are we going to be looking at it?

Mr. Chairman: There is no doubt that this committee will be sent the new bill—I suspect it will be—in which case it might make parts of this redundant. We would not be doing the new bill until, I would guess, next January because it would be debated in October or November and then referred out to the committee, if things go the way they normally do around here.

Ms. Collins: I take it then that our options are to deal with it now or to defer this until we do deal with the bill.

Mr. McGuigan: I think we are independent of the current proposal. There is another side of it. The minister's bill could be amended even by the government or by opposition members before we do it. It is not written in stone. It seems to me we can go ahead and do our thing, but let the chips fall where they may.

Mr. Chairman: I am worried that we could do this today and Wednesday. Wednesday afternoon, by the way, I gather the three leaders are going to be wrapping up a debate and all the members will be in the House.

Mr. Miller: We could almost sit the first week of July.

Mr. Chairman: No, we cannot.

Mr. Miller: We have to have time for the Sunday shopping bill.

Mr. Chairman: You are out of order.

I think that we are hung up on this. There is nothing we can do about it because there simply is not the time to deal with it. There are an enormous number of recommendations. I hate doing this to Merike who has done the work of putting these recommendations down, but I do not know how we can—I mean any one of these recommendations we could debate for most of an afternoon.

Ms. Madisso: If you remember what you did last year, you had the same problem. You went through the recommendations and you selected some on a consensus basis and the report consisted of that. Now you could do that.

I think you end up with the least effective recommendations in your report, but you end up with something. Or you could have a report that consisted of recommendations that you had taken a vote on. It does not have to be that it consists only of recommendations. You could finish that in a day or two, I would think.

Mr. Chairman: We do not even have that day or two.

Ms. Madisso: I think last year you went through it in about an hour or two. You really did sift through it, but it was by consensus last year.

Mr. Miller: We have done a lot of work on this.

Mr. Chairman: I know.

Mr. Miller: I think we should try to salvage something out of it that is going to be useful. I think that is the whole intent.

Mr. McGuigan: I guess we will not know unless we try.

Mr. Chairman: Is it the wish of the committee to start and go through? Before we do that, do you want to leave the motion that was tabled until the end of the day or do you want to deal with it now?

Mrs. Marland: I gave Mrs. Grier's office notice that we would be giving a 20-minute call for that vote at the time that the chairman decided it.

I think it would be better to deal with it, if we could agree. It is only going to take a vote probably anyway. I would move that we bring back to the table the motion by Mr. Wildman pertaining to Bill 13 proposed by the member for Etobicoke-Lakeshore (Mrs. Grier), the environmental bill of rights. I would also request that we have the 20 minutes to call for the vote.

Mr. Chairman: Any debate on that? Is that agreed? Then at 4:55 p.m. we will deal with this matter. Second, after that, we will start through the WCB recommendations. If we do not finish today, we will take a look at them Wednesday. Is there agreement on that?

Ms. Collins: Is the discussion on the WCB report in camera?

Mr. Chairman: Yes, I would suggest that be in camera because it is dealing with the writing of the report. Good suggestion.

Mr. Leone: If we do not have time, why do we have to rush? It is usually the same story, last-minute rush, rush, rush. There are important things to discuss, one page or two pages or three pages and then—

Mr. Chairman: We are not going to try and ram anything down anybody's throat. If there is not a consensus on a recommendation, we move on. All right?

The committee recessed at 4:35 p.m.

1653

ORGANIZATION

Mr. Chairman: The committee will come back to order. We agreed we would do this at 4:55 p.m.

The committee will recall that the notice of motion from Mr. Wildman was, "That, when the committee sits during the summer adjournment of the House, Bill 13, An Act respecting Environmental Rights in Ontario, be the first item considered; that notice be given to groups in favour of and opposed

to the bill; and that two weeks be allocated to consider the bill, consisting of public hearings and clause-by-clause consideration of the bill."

That was the motion moved by Mr. Wildman and tabled by the committee to be dealt with this week. Does anyone wish to speak to Mr. Wildman's motion dealing with Mrs. Grier's bill?

Mr. McGuigan: Personally, I think we should have a motion to lift it.

Mr. Chairman: Do you want to move that motion?

Mr. McGuigan: I do not want to.

Mr. Wildman: I will move it.

Mr. Chairman: Mr. Wildman moves that the motion be lifted from the table and dealt with.

Mr. Wildman: Lifted from the table and dumped in your laps.

Mr. Chairman: Is that agreed?

Mrs. Marland: Are we speaking now to the motion that it be lifted?

Mr. Chairman: All those in favour of that motion? Opposed?

Motion agreed to.

Mr. Chairman: Is there any debate on Mr. Wildman's motion?

Mrs. Marland: I would like to speak on that motion. Earlier this afternoon, we were discussing the fact that the committee has now only been allocated three weeks of hearing time or sitting time, whatever phrase we want to use, to deal with those matters that have been referred to this committee. We were discussing the fact that we would spend those three weeks, which we have decided would be the last two weeks of August and the week beginning September 12, dealing with the trucking bills, being two government bills that have been referred to this committee.

At that time, I raised the question about the motion that had been tabled with respect to Bill 13, proposed by the member for Etobicoke-Lakeshore, on environmental rights. Obviously, speaking as the Environment critic for the Conservative caucus, I too support a bill for environmental rights in this province. I recognize the very real significance of Mrs. Grier's bill and the fact that the bill was supported by all parties in this House. In fact, the parliamentary assistant to the minister, as I recall, spoke very strongly in favour of that bill on behalf of the Liberal government.

Recognizing that the bill passed second reading and was referred to this committee, I see it as a mandate of this committee to deal with that bill. It is not a difficult bill, and of course it can be amended to suit the direction and concerns of any member of this committee, and indeed, when it goes back to the House, if necessary it can be further amended.

Having been a member of this Legislature only for three years, I was not aware of the history of the trucking bills. It has now been brought to my attention that the trucking bills, as a colloquial term for legislation pertaining to that industry, have been discussed and committed for almost 10 years.

The subject certainly must be very well known throughout the province. If the legislation itself that has now been referred to us is not very different from previous legislation that has been referred to a committee of the Legislature to pursue through those industries and through the public as a whole around the province, I am wondering whether we need to spend all of three weeks on those two bills.

I recognize that the only issue with the trucking bills is that they go through the public process, and that is important. But if the content of the bills is not very different from that same public process they have already been through, I would respectfully suggest that it is very simple for this committee to deal with those trucking bills for two weeks and still leave one week to deal with Bill 13.

That is the direction I would like to ask this committee to support because I think the comments that were made the last time we discussed Bill 13 in this committee still stand today. I will not bother repeating those. But I think it is important that our work as a committee be perceived as facing the responsibilities of doing the job with the legislation that has been referred to us.

I also should say that my colleague, Mr. Pollock, is here today, substituting on the committee. I know that at the last meeting he brought the matter of his bill forward too. I think, in fairness to the private members' bills process, it would be fair to at least give Mr. Pollock some indication that hopefully, when we reconvene in October, we could agree to set aside some time to deal with this bill too.

1700

Mrs. Grier: I just want to say that I profoundly regret the attitude that I sense the government is taking to having some hearings on Bill 13. As Mrs. Marland has said, it is a bill the principle of which has received fairly universal support.

Quite frankly, I thought committees were there to take a principle, to look at the details, to hear from the public and to improve the way in which that principle had first been presented, i.e., the actual wording of the bill presented by the member for Bruce (Mr. Elston) so many years ago.

I really regret what appears to be a reluctance, to put it mildly, on the part of the Minister of the Environment (Mr. Bradley) and the government House leader to allow the committee to do that. It is not as though by holding hearings the members of the committee or the government were committing themselves to vote in favour of what ultimately emerged.

All that I thought was before this committee was an opportunity to allow those people who have dealt with environmental issues and who deal with them on a day-to-day basis, both from the ministry, from industry and from nongovernmental organizations, to come and give us the benefit of their opinions. It seemed to me that this was, as I say, what committees were here to do. I frankly do not buy that a week of the time of the government cannot be found to deal with the bill.

I urge the members of the Liberal Party to vote in favour of the motion that is before us.

Mr. McGuigan: I certainly do not have any quarrel with the sincerity

of both opposition members. I think you have to realize that the government has an agenda of its own and its own legislation that it regards as very important. Transportation has gone along on a certain process, I guess since the 1920s. The present bill is proposed to change that rather drastically. Certainly, from my mail, phone calls and contact with both shippers and truckers in my part of the country, I know there is a lot of pressure to see this bill amended, passed, have public hearings and whatever.

I remind all members that over the last three years, as part of the resurgence of industry in Ontario, we moved to this just-in-time delivery system which has meant a great many more trucks on the road, and also, more independent truckers out there. We are concerned about safety and all of those matters that go along with it.

I think you have to have some sympathy for the government in wanting to deal with its own bill since, unfortunately, we only have this short period of time. Certainly, on behalf of the government, I would say that this is our number one priority. We oppose the motion.

Ms. Collins: If I can add, I have to agree with Mr. McGuigan.

I just want to say as a new member that although there may have been discussion over the past 10 years about the trucking bills, as one new member I certainly have not been involved in that discussion. I would like to get to know the issue a little better. I think it will take three weeks to do that.

I also want to point out that members of this committee, at least in my party, are interested in a wide range of issues and do not just show up to the committee for their own particular interest in one particular area. Just for the record, I wanted to mention that.

Mr. Wildman: I was not going to participate in the debate. I have made my views clear on this in my motion before, but I have been provoked to respond.

Mr. Chairman: Teasing the bears, again.

Mr. Wildman: I will say that we all understand the numbers in this Legislature, in the assembly. We acknowledge that even with the significant numbers, because of the proportion on the committee, the Liberal Party has some difficulty in manning all of the committees.

Surely, if those government members are aware of that, they must have some understanding, even though they have not had the experience of having less than 20 members and having to attempt to man all of the committees. In order to be able to ensure that the opposition view is represented on committees and that we do not grind the whole process to a halt by saying that we cannot have more than one committee sitting at a time, there is tendency not to have all the members show up unless there is a matter of contention when there is work going on in the committee. On the basis of consensus, it is not always necessary to have full membership sitting on the committee.

Mr. Pollock: I just want to mention the fact that I assume there is no way you are going to deal with the transport bill in two weeks and then spend one week on Mrs. Grier's bill. Even if you did do that, it is not going to allow any time for mine. I can assume that you are not going to deal with it at all.

Mr. Chairman: I think that is a safe assumption.

Mr. Wildman: It is safe to assume they have abandoned the trains, but they do not want to abandon the trucks.

Mr. Miller: I have been listening carefully to the debate. In the debate when they brought the original bill in, they were very critical that the government was not listening. I do not think that is true at all. We did not know at that point in time what legislation we were going to have to deal with. Mrs. Marland indicated that the transportation bill has been in the works for 10 years. She is quite correct. I think it may go back further than that.

I think it is important to Ontario. It is a government bill and it is going to, hopefully, assist the industry in moving forward to service Ontario much better.

I do not think we are opposed to Mrs. Grier's bill. As a matter of fact, I think Stuart Smith brought in an almost identical bill when we were in opposition. But we have a certain length of time. The agenda was set. I was under the impression that we were going to sit three weeks in August. But when the agenda came in today, it had been adjusted. I think we have to respect the fact that even government members have other duties to do.

The opposition has a full schedule when it comes to summertime. They want some holidays too. I do not think you need to point the finger at the government, that we are trying to stonewall you. It is a matter of not having the time. Even today, we did not have the time to deal with the workers' compensation bill, which means so much to the province, with any justice.

I do not think you can really criticize us. I am not going to sit here and take it without fighting back a little bit. We are concerned about the future of the province, whether it is environmental or trucking. We are and we are listening. We have to be realistic also. The government has some legislation that needs to be dealt with. We are dealing with it.

Once you take the vote today, it is dead. If there were some time, we could maybe work it in, if time permitted and the House leaders agreed on the timing of it. I am not sure if you are doing the right thing by voting on the bill today, but that is the position we are in and we have to make a decision.

Mr. Wildman: On a point of order, Mr. Chairman: No matter what the result of the vote is today, is it not correct that the matter has still been referred by the House to this committee?

Mr. Chairman: All we are talking about is what is scheduled this summer.

Mr. Wildman: So whatever the result of the vote today, if the committee decides not to deal with it this summer, we still at some time will have to deal with it.

Mrs. Marland: The previous speaker said that it is important to Ontario to have this trucking legislation come through, that it is important to the government and that the government has its agenda. It is really ironical because for the amount of time I have sat in the House, I know how many times those bills have been printed on the order paper and have not been called for second reading. I think it is kind of funny to hear the government

members saying that because if there are two bills that we have been waiting and waiting for this government to call for second reading and get referred out to committee, it happens to be those two.

However, those two bills are here. They are the same bills that have been out to committee before. We are not asking that Bill 13 be prioritized ahead of those bills. We are asking that we be reasonable and responsible in ordering our business. That is all.

I think that in speaking for the environment through which those trucks will travel, the sooner we get on with recognizing a bill, if not Bill 13 then one with similar content and intent, as a responsibility of this Legislature, the sooner we will have secured the future of this province in a number of senses.

1710

I feel, too, as someone who has a great deal of difficulty making all these meetings, that the comment towards the member who is the Environment critic for the official opposition was a little unfortunate, if only for the fact that Mrs. Grier, when she shows up for certain issues on this committee, it is because she has managed, as all of us are doing in the opposition, to leave some other responsibility.

It was indeed a very cheap shot to make. I really hope that the person who made it, Ms. Collins, might consider withdrawing it because it is very easy to man committees, as Mr. Wildman has said, with 94 members. It is pretty difficult with 16 or 17 or 18, which is what we are talking about in our parties.

I think the fact still comes back to the issue that what begs the question about whether or not we can spare some of the time that has now been reduced—I recognize our sitting time has been reduced by the House leaders. It is not something any of us in this room have any control over. But I have to wonder, if we had had six weeks, if I were a betting member, I would bet that we would have spent six weeks on the trucking bills and still would not have had time for Bill 13, but that is just a whimsical comment on my part.

Nevertheless, we do have this legislation referred to us and we have three weeks. I would suggest that we spend two weeks on the trucking bills. I would not like to be so presumptuous as to suggest that I would have more input on those trucking bills than previous members of previous committees, so I would be quite happy to spend two weeks on the trucking bills and a week on securing the future, environmentally speaking, of our province.

Ms. Collins: In response, I wish to clarify that we missed the participation of Mrs. Grier in that very important matter we were dealing with in the north, which was health and safety in the north. I will leave it at that.

Mr. Chairman: Somebody has provoked Mr. Black.

Mr. Black: With all due respect, I know that Mrs. Marland did not mean to suggest that only she and Mrs. Grier were concerned about the environment or that her party and the party of Mrs. Grier were the only parties concerned about the environment.

I think we should have the record set straight that all of us here are

concerned about the environment. We are concerned about those issues that affect it, but the fact is that the trucking bill is a very important bill. No matter what Mrs. Marland does to minimize it, it will not change the fact that many of us are getting brief after brief after brief and letter after letter after letter from both sides on that issue.

What has changed with the reregulation of trucking, Mrs. Marland, is the impact free trade may have on the regulation of trucking in this province and so it needs to be dealt with, and it needs to be dealt with thoroughly. Whether that will take two or three weeks of your committee, I am not sure, but I hate to see the opposition members minimizing the importance of reregulation that is very important to this government and to the trucking industry in this province.

Mr. Wildman: I do not want to prolong this too much, but I do want to indicate that I am in agreement with Mr. Black that all of us, I am sure, are in our own way interested in protecting the environment. I am also sure that all members of the House, not just all members of this committee, are concerned about health and safety in the workplace, and particularly in the mining industry.

I know it would be out of order for me to respond to the concerns about reregulation and how they relate to free trade, and to suggest that it is interesting to have a government that expresses such great rhetoric against free trade but then is introducing legislation to implement it.

Mr. Chairman: Which is why you will not deal with that.

Mr. Wildman: That is why I will not deal with that. I would say, too, that it is interesting to note we are having this discussion as a result of a decision made by the House leaders as to how much time we should have, when we all know the commitment of the government House leader to the principle that committees set their own agendas.

Mr. McGuigan: Can I make a comment?

Mr. Chairman: We have a list. Mrs. Grier is next.

Mrs. Grier: I was hoping to have the last word and make it brief, merely to say that I assure the members of the committee, especially the government members, that I ascribe no responsibility for what has happened to them. It lies entirely with the government House leader and the minister of the Environment.

Mr. McGuigan: I am sorry we have got down to taking shots at one another, but I would not want anybody to be confused that the trucking bills at all address the free trade matter. The trucking bills and free trade are two separate items.

Mr. Wildman: It was Mr. Black who raised free trade.

Mr. Chairman: Order. We did agree we are not talking about free trade.

Mr. McGuigan: If I could just finish, looking down the road, if free trade is forced upon us, as certain forces in this country would do, at that

point it may have some bearing, but trucking is not part of the free trade deal and so they are not directly connected.

Mr. Chairman: Agreed. Is that the last word?

Mr. Wildman: Question.

Mr. Chairman: The question has been called. All those in favour of Mr. Wildman's motion? It is all understood? Please indicate.

Mrs. Marland: Could we have a recorded vote?

Mr. Chairman: We will go through the whole list and indicate aye or nay.

The committee divided on Mr. Wildman's motion, which was negatived on the following vote:

Ayes

Grier, Marland, Pollock, Wildman.

Nays

Black, Collins, Leone, McGuigan, Miclash, Miller.

Ayes 4; nays 6.

Mr. Chairman: Before we move on to the next order of business, I think the committee should welcome a very important young guest to the committee this afternoon, Mr. Cary Wildman. All of Mr. Wildman's good advice he gets from Cary.

Mrs. Grier: To keep my record, now that we are finished, I will leave.

Mr. Chairman: Thank you for your attendance, Mrs. Grier.

The next part of the committee meeting will be in camera because we shall be discussing the Workers' Compensation Board report.

Mr. Wildman: On a point of order, Mr. Chairman: I would like the dispensation of the committee to allow my adviser, Cary Wildman, to remain in attendance, even though we are in camera.

Mr. Chairman: Is there general agreement on that? Agreed.

The committee continued in camera at 5:18 p.m.

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STANDING COMMITTEE ON RESOURCES DEVELOPMENT

ONTARIO HIGHWAY TRANSPORT BOARD AMENDMENT ACT
TRUCK TRANSPORTATION ACT

TUESDAY, AUGUST 23, 1988

Morning Sitting



STANDING COMMITTEE ON RESOURCES DEVELOPMENT

CHAIRMAN: Laughren, Floyd (Nickel Belt NDP)

VICE-CHAIRMAN: Wildman, Bud (Algoma NDP)

Brown, Michael A. (Algoma-Manitoulin L)

Collins, Shirley (Wentworth East L)

Leone, Laureano (Downsview L)

Marland, Margaret (Mississauga South PC)

McGuigan, James F. (Essex-Kent L)

Miclash, Frank (Kenora L)

Miller, Gordon I. (Norfolk L)

Pouliot, Gilles (Lake Nipigon NDP)

Wiseman, Douglas J. (Lanark-Renfrew PC)

Substitutions:

McGuinty, Dalton J. (Ottawa South L) for Ms. Collins

Morin-Strom, Karl E. (Sault Ste. Marie NDP) for Mr. Wildman

Polsinelli, Claudio (Yorkview L) for Mr. Leone

Roberts, Marietta L. D. (Elgin L) for Mr. Miller

Clerk: Mellor, Lynn

Staff:

Richmond, Jerry M., Research Officer, Legislative Research Service

Witnesses:

From the Ministry of Transportation:

Fulton, Hon. Ed, Minister of Transportation (Scarborough East L)

Kelch, Margaret, Acting Deputy Minister and Assistant Deputy Minister, Safety and Regulation

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Tuesday, August 23, 1988

The committee met at 10:10 a.m. in room 228.

ONTARIO HIGHWAY TRANSPORT BOARD AMENDMENT ACT
TRUCK TRANSPORTATION ACT

Consideration of Bill 87, An Act to amend the Ontario Highway Transport Board Act, and Bill 88, An Act to regulate Truck Transportation.

Mr. Chairman: The committee will come to order. We will be dealing with a couple of bills, Bill 87, An Act to amend the Ontario Highway Transport Board Act, and Bill 88, An Act to regulate Truck Transportation. The schedule of the committee is for this week, next week and then the week of September 12 to deal with public hearings.

Members were sent a memo earlier this month which indicated that we needed the three weeks for public hearings and would not be able to do clause-by-clause until the Legislature returned. Remember, we originally thought we could do it in two weeks, but we were getting a lot of heat for more time for people to make presentations. Since that is the purpose of what we are all about here, we thought we should accommodate that. It means three weeks of public hearings and then, when the House returns, our first order of business will be the clause-by-clause.

Members should make a decision as to whether that should be the first week or second week back. The reason I put the question to you is that often the first week back is a bit strange, with opposition parties moving motions of nonconfidence, emergency debates and so forth, so we may want to wait until the second week to deal with the clause-by-clause.

Mr. Wiseman: I think it would be best.

Mr. Chairman: OK. Why do we not set it up that we start that process and deal with clause-by-clause of these two bills in the second week back? No problems with that? The first week we will get settled in.

This morning we have with us the minister himself, Mr. Fulton. Mr. Fulton is going to lead off with a few remarks. I invite members, for the rest of the morning or whatever time they wish to use, to have an exchange with one another and the minister.

MINISTRY OF TRANSPORTATION

Hon. Mr. Fulton: Thank you very much, Mr. Chairman and members of the standing committee on resources development. Today, I am pleased to help open your proceedings on Bill 87 and Bill 88, two bills the government feels will improve the trucking regulatory environment in Ontario. For some of you, this will be your introduction to the subject. For others, it will be your second visit to this committee.

For me, trucking regulatory reform has been, to put it quite simply, the dominant issue in my three years in office as minister. I cannot count the

number of meetings attended, briefs read or letters signed with respect to this issue. For all of us, I hope, today marks the beginning of the end of a 12-year process of consultation, concession and compromise.

As Bill 87 is a companion bill to the more significant Bill 88, I will focus the bulk of my comments on the latter bill, the Truck Transportation Act. Bill 88, the TTA, will replace the antiquated Public Commercial Vehicles Act, which was enacted in 1928. This new act will provide easier access to the industry for qualified applicants.

In the future, entry will not be contingent on public necessity and convenience but will be based instead on the fitness of the applicant. Proof of insurance and an acceptable safety record will be among the criteria that determine an applicant's fitness.

Bill 87, the Highway Transport Board Amendment Act, complements Bill 88. It provides the board with the power to hold hearings to review the performance of truck operators with respect to licensing requirements.

As anyone who has driven our highways can attest, trucking has become an increasingly important mode of transportation for Ontario's business and industrial sector. In fact, trucking is crucial to our economic survival. It services virtually all of our commercial sector to some degree. There is a steady growth in this sector and, in 1987 alone, commercial vehicle registrations grew by more than five per cent.

With trucks playing such a vital role in our economy, the government of Ontario has a duty to make sure the regulations under which they operate are responsive to the needs of shippers, operators and, of course, ultimately the Ontario consumer. This is the premise on which the proposals you will review are based.

There are numerous advantages that the people of Ontario will gain from implementation of this legislation, including stimulation of the provincial economy. Relaxed market entry requirements and greater competitiveness in price and service are crucial to Ontario's manufacturing and industrial base in its effort to compete, particularly in the international marketplace.

It will enhance small business opportunities. These reforms will encourage the growth of both local and specialized carriers that can efficiently serve the needs of a community.

It will ensure a dependable trucking industry. A stated purpose of these reforms is to maintain a dependable trucking industry. A fitness test, coupled with performance monitoring, will ensure that a fair and competitive environment is created and maintained.

It will increase innovation, flexibility and creativity in the trucking industry, resulting in lower transportation costs and a wider range of service options for the shippers.

There will be the opportunity for more local involvement in trucking in remote areas such as northern Ontario, which in turn will create the potential for better service and lower transportation costs.

All of these benefits will ultimately flow to the people of Ontario who, in the absence of price and service innovation in the trucking industry, have typically paid inflated prices for consumer goods and services. The reform

proposals before you are directed at truck transportation, but their broader focus is the consumer who purchases goods and services carried by truck.

Bill 87 and Bill 88 were not conceived in a vacuum. They are the result of an exhaustive consultation exercise which has taken place with all parties interested in trucking and trucking reform over the past decade. Indeed, while preparing for today's hearings, I reviewed pages of areas where the government made concessions, notably to the Ontario Trucking Association.

Since I became Minister of Transportation in 1985, I have met with all the major groups affected by this legislation, including the users of trucking services and, of course, the trucking industry itself. Both have played important roles in shaping the direction of trucking reform initiatives. Accordingly, these initiatives reflect a spirit of compromise between the desires and objectives of both shippers and carriers. One of the major concerns expressed by all groups was safety.

I must stress that for many years Ontario has been a leader in truck safety. For example, nine of the national safety code standards have been in place in Ontario for many years. Of the remaining six, two are new: hours of service and daily pre-trip inspections. The other four are simply minor adjustments to existing Ontario standards. In fact, many of the NSC standards are based in whole or in part on existing Ontario safety regulations.

We are also well ahead of other jurisdictions, including the United States, which has only recently realized the need for a commercial driver licence system. Ontario has had this in place since the early 1970s.

1020

Last year, safety was the major concern of some opponents to the TTA. This year reciprocity has become the hot item. It is argued that it is OK to implement reforms, but US truckers from states with restrictive entry controls must similarly be restricted here in Ontario.

What is not mentioned by proponents of reciprocity is that if a US carrier gets a licence to operate in Ontario, federal customs and immigration restrictions force him to operate that licence from Ontario. In addition, intra-Ontario trucking services, by definition, are delivered within Ontario, employing Canadians. A US carrier would scarcely be very effective conducting Ontario business of this nature from any other jurisdiction. That is why we have many US and other foreign-owned carriers operating today in Ontario as Ontario businesses.

Regarding the operation of US carriers in Ontario, it has been pointed out that customs and immigration laws prohibit any domestic moves by either an American driver or vehicle. These rules are enforced at the point of entry and departure at the border, as well as through audit investigations by the federal government. I am currently seeking authority from the Minister of Employment and Immigration and the minister responsible for customs and excise for our Ontario highway carrier officers to enforce these laws on the highway as part of our overall enforcement program.

In this vein, with respect to reciprocity, the Ontario Trucking Association posed this question of the Premier: "If it were in the power of the government of Ontario, would it allow the unencumbered sale and marketing of American steel products in the province of Ontario if Dofasco, Stelco and Algoma steel products could not be sold in the United States?" They relate

this question to what we are trying to do with the TTA. But the question relates to international trade, whereas the TTA deals only with trucking totally within Ontario. There is simply no comparison.

To be fair, what they should have asked was, "If it were in the power of the Ontario government, would it allow an American steel company to establish a plant in Ontario creating Ontario jobs?" The answer to this one is obviously different. We might even give them incentives to do this. This example is completely analogous to a US trucking company setting up business in Ontario.

You will, no doubt, hear a great deal about legal opinions. I say, with very great respect, that we can all recall many incidents of different lawyers offering different opinions about the same topic. Suffice it to say, the government's own legal advisers suggest that a reciprocity clause would be outside of our constitutional ken, being that such a clause is primarily a trade measure. That is too often forgotten.

What is also overlooked is the question of our right, as legislators, to propose laws we believe to be in the best interests of Ontario. With a reciprocity clause, we would in effect surrender our right to make laws for Ontario. Trucking regulations would, in the future proposed under reciprocity, be dictated by the whim of legislators in Albany, Columbus or other jurisdictions.

As each of these jurisdictions passed trucking laws, ours would be automatically amended to reflect the legislative environment in jurisdictions far outside of Ontario's borders.

We happen to believe this law is good for Ontario and reflects the dynamic growth of our economy. We believe it should reflect the reality of our experience. We believe these are rules made by Ontarians and for Ontarians.

The OTA has also recently raised the issue of denial of an operation licence following a public interest hearing. This is despite the fact that the proposals in the TTA allowing fleet restrictions for the first four years of the licence go right back to the Public Commercial Vehicle Act Review Committee of 1983, of which the OTA was a key member.

If we allow denial, we simply lose our transition period allowing the existing market to adjust. If a carrier is restricted to a handful of trucks he cannot be a threat to the public interest.

It seems clear that the OTA's position with respect to these provincial bills is the same as the Canadian Trucking Association's position on federal trucking reforms. The CTA position is typified by the president who, in the April 1988 issue of Motor Truck magazine, announced that "stalling federal government efforts to deregulate trucking for 12 years is not bad for a rearguard action." Such statements undermine the spirit of compromise that should flow from any consultation exercise.

During the reform process, due consideration was given to the many and varied concerns raised by all parties, and I would point out that we have made many concessions in many areas. For example, we agreed to extend the term of the public interest test to five years, even though shippers were very much opposed to the test. We also conceded to the inclusion of licensing of freight forwarders under the Truck Transportation Act, even though these agents of shippers and carriers are not directly responsible for the movement of vehicles over the road.

Together with the public interest test is a review committee, the advisory committee mandated under the TTA. Drawn from all interested parties, including the trucking industry, the committee will review the public interest test. At the end of five years, it will recommend whether or not the test should be sunsetted or maintained. Indeed, this will be an ongoing dynamic process. At any time between the passage of the TTA and the five years set out in law, the advisory group may recommend changes to the public interest test, changes which may materially answer concerns raised at your committee hearings.

Along with my concessions, leadership was necessary in making some changes in the reform proposals. I did not, for example, think it appropriate or suitable to require applicants for trucking licences to be tested for their financial or business capabilities through the TTA. Although the fitness test is still thorough, the requirement for a review of business plans has been eliminated.

Frankly, many of the remaining arguments put forth now threaten to cloud the purpose of reform. Very simply, Bill 88 and its companion legislation replace regulations that were enacted in 1928 and only serve to protect one industry at the expense of shippers, manufacturers and, ultimately, Ontario consumers.

Importantly, Ontario is not acting in isolation in its efforts to reform outdated trucking regulations. Changes to extraprovincial legislation were implemented on January 1 of this year, thereby creating a situation where Ontario currently must administer two different systems.

Indeed, while I can only accept responsibility for the past three years, I dare say Ontario would be giving out very confused signals were we to delay implementation of the TTA. While I have been in office, many provinces have looked to Ontario for guidance and leadership in the area of trucking reform. We cannot turn our backs on what we have helped to create in Canada. This will no doubt be raised when officials from the Quebec Ministry of Transport come to your hearings later on.

It is essential, in my view, therefore, that these legislative proposals proceed, both on their own merits and as a part of a broader effort to achieve compatibility with interprovincial regulations.

As I stated earlier, trucking is vital to Ontario's economic health. Our manufacturing and industrial base relies heavily on the trucking industry to move its goods. Consequently, the sooner these reforms are in place, the sooner both shippers and entrepreneurs in the trucking industry will reap the benefits of a more flexible regulatory environment.

Ontario has waited long enough for these much-needed reforms. After over a decade of meetings and compromises we have come up with an acceptable legislative package, and I now hope that the members of this committee will demonstrate their leadership in supporting implementation of this legislation at the earliest possible date. Thank you.

Mr. Chairman: Minister, you indicated earlier that this is your deputy minister?

Hon. Mr. Fulton: The acting deputy minister and the assistant deputy minister responsible for safety and regulations, Margaret Kelch.

Mr. Chairman: Do you want to deal with this now? Is that all right with the members, or do you want to question the minister?

1030

Mr. Polsinelli: Yes. Thank you for your presentation. I was wondering whether you could answer a few questions to help me understand this legislation a little bit better.

Mr. Chairman: Before we get into that, would it be helpful if we heard from both first?

Mr. Wiseman: I think we should hear from both.

Mr. Polsinelli: It matters naught to me. It has to do with the minister's speech, but perhaps we should go on.

Mr. Chairman: I think it would be better if we heard from both, so that the whole package is before the members.

Ms. Kelch: As the minister has indicated, what we are about over the next three weeks of hearings is an overview of Bill 87 and Bill 88. As the minister has also been quite articulate in indicating, the trucking reform legislation will bring about much-needed change to the face of trucking in Ontario.

Bill 86, the third part of the companion pieces of regulatory reform in Ontario, has already proceeded to third reading and is not being reviewed here.

Bill 87 reforms the Ontario Highway Transport Board. It gives the board power to hold hearings and to review the performance of truck operators, as well as giving the board power to review its own decisions in connection with Bill 88.

Bill 88 is, of course, the linchpin of our reform package and it is the one I am going to focus most of my attention upon.

Just before I do that, there have been some questions in the past with respect to why Bill 86, the third piece of the package, has not yet been proclaimed. Bill 86, the Highway Traffic Amendment Act, was ordered for third reading on June 20. It has not yet been proclaimed because it is very much an integral part of the package of reform. If we were in fact to proclaim Bill 86 at this time, it would create detailed administrative work and cost that is not appropriate to proceed with at this time. It would be best if we did those things in companion with 87 and 88.

The history of reform in Ontario: Again, the minister has indicated we do go back at least a decade to 1977, when Ontario did in fact have a select committee on the highway transportation of goods. Very specifically, Ontario has been a leader in the area of regulatory reform through all of those years.

In 1981 there was a Public Commercial Vehicles Act Review Committee, and the minister has referred to specific recommendations coming out of that committee which form the underpinnings of the approaches we are talking about today.

Post-1985, the minister has conducted an extensive review on all of the issues with the industry and any other groups expressing interest.

Also of note in terms of the background and chronology, early in 1988 the federal government did implement the Motor Vehicle Transport Act reforming

the interprovincial regulatory trucking environment. It came into place on January 1. It is an important piece of the chronology in that many of the issues that we are discussing in fact relate to transborder issues rather than the Bill 88 that is on the table today, which addresses movement within Ontario only.

The consultation process since the formation of the PCV review committee in 1981 involved continuous and extensive liaison with all interest groups, and of course it included the trucking industry but also manufacturing interests, shippers, labour, transportation lawyers, as well as other governmental agencies. Prior to the introduction of bills that were then known as 150, 151 and 152, the minister did review the issues with representatives from all of those groups.

Regulatory reform of the Ontario trucking industry: Specifically, the bill has been in place since 1928. We do feel that it is obsolete, not only because of its age but, more important, because of the changing environment of the province and its economy. There is a patchwork of amendments that has rendered the legislation difficult to understand and very difficult to enforce. It is widely perceived as being both unfair and inequitable.

The Public Commercial Vehicles Act challenges basically fall into three areas, the first one being restricted entry. Public necessity and convenience, the current rules, do limit competition and therefore there is an unfairness to any new entrants into the system. There are high rates and few service options to be offered by the trucking industry today. Often this protects the truckers at the expense of the shippers and the consumers.

As an indication of shippers' dissatisfaction with the current service provided by the for-hire trucking industry, private trucking has risen from a market share of about 42 per cent in 1971 to a share of in excess of 55 per cent in 1983, a period of just in excess of 10 years.

With respect to enforcement, I have indicated the legislation is outdated. There is in fact rate filing, but very few people actually charge the rates that are filed today with the Ontario Highway Transport Board. There is of course the added challenge of there being a rather unsympathetic court, as charges are laid, in terms of taking these charges seriously.

There has been a significant growth—another signal of the antiquated current system—of illegal trucking. Twenty per cent of the for-hire revenues today are in fact on the basis of illegal trucking operations. This is another indication, I believe, of the unfair competitive environment that is out there. The licensed industry, and hence restricted carriers, is directly in competition with the unlicensed industry, the illegal carriers.

The principles of reform as developed through that consultation process that I have described fall into a variety of areas including less government influence, market-controlled supply, there being more competition and hence reduced rates. Allowing fair and innovative competition, it will be easier to get in with the fitness and the public-interest test system I will describe, but it will also be harder to stay in. There is very specifically going to be, in this new environment, a stricter set of performance standards.

Finally, of course, safety regulation has been increased. The minister specifically made reference to the National Safety Code.

The aim of regulatory reform, therefore, is to provide this fair

competition, to stimulate innovation, particularly among the small carriers in the province, and to encourage efficiency without compromising safety; of course, that is a very prominent objective for the ministry.

Bill 88 in particular provides those incentives to the trucking industry to become more flexible and, more importantly, more responsive to the needs of the shippers in Ontario. This will improve the competitive position of Ontario businesses and ultimately benefit the Ontario consumer through lower prices for those goods transported by truck.

The proposals balance the needs and desires of the trucking industry with those of the shippers and manufacturers who use trucking services and, of course, ultimately the consumer in Ontario.

I think it might be valuable for the committee's deliberations to quickly run through what the current Public Commercial Vehicles Act environment allows and does not allow and what is being proposed specifically under Bill 88.

With respect to purpose, there is no purpose stated in the current PCV legislation. Bill 88, though, is very explicit, and I quote, "To foster fair and innovative competition and be of benefit to users of transportation services and not for the protection from competition of individual providers of such services." That is a very clear statement of intent.

On entry criteria, the proof of public necessity and convenience through the process of the Ontario Highway Transport Board is the current system. Under the new process, there will be a fitness test requirement which includes a safety plan, proof of insurance as well as a review of the carrier's past performance, administered by the Ministry of Transportation with no hearing. In conjunction with that, there will be in the legislation the five-year provision for a public-interest test. That test will be carried out by the Ontario Highway Transport Board.

The competency certificate. There is no proof of competency currently required by a new applicant. Under the new process, an applicant or an employee must hold a certificate of competence. That is gained by passing a written test on highway law and safety procedures in effect in Ontario for the trucking industry, again administered by the ministry. We will, therefore, have a much more knowledgeable trucking industry which will improve operational performance and have a direct impact on the safe operating environment.

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Rate control: Tariffs currently must be filed with the board. Under the new system, tariff filing will not be required but rates will have to be published. Confidential contracts will also be allowed and I think this a better reflection of the current industry practice. Owner-drivers under the current system have no specific licence. They cannot legally operate for a private carrier. Under the new bill, the new licence will apply to those owner-drivers. Again, it recognizes the right of those owner-drivers to operate for both for-hire and the private carrier industry.

Single-source leasing: It is presently illegal to lease both a truck and a driver from the same source, as that is said to be no different than actually being in the for-hire trucking industry. Under the new set of rules, a new single-source licence will be available under the Truck Transportation

Act. There will be, though, again being sensitive to some of the trucking industry's concerns, a minimum of a 30-day contract required.

Intercorporate trucking: Compensated trucking between two companies having common ownership is permitted today if the common ownership is at least 90 per cent. That figure will be reduced to 50 per cent, which I think increases the scope of intercorporate trucking and is reflective of the situation across much of the country.

Freight forwarders: Today a specific licence is required for freight forwarders under the Public Commercial Vehicles Act and, under Bill 88—the minister referred to this as one of his concessions—a licence will still be required.

Transfer of licences: Today they are allowed but the board decides if public necessity and convenience would be compromised. Under the new system, they would not be allowed. All entry requirements would have to be satisfied. All licensees must prove they are fit to operate, thus ensuring safe movement.

Petitions to cabinet: They are currently allowed; they will not be allowed under the new system. The Ontario Highway Transport Board will have the ability to rehear and re-evaluate its decisions and I think that allows for a more complete hearing. The minister mentioned the advisory committee which will be put in place. Currently there is no such body. Under the new system, there will be somewhere around 15 to 20 people who will advise the minister on the effectiveness of the new system.

Seizure and detention: There are no provisions under the current rules but the new rules will allow or will give powers to seize licences and plates and, more importantly, to detain vehicles suspected of violations. This will greatly improve, I believe, the effectiveness of the minister's highway enforcement staff. On the safety issues, there are no specific provisions listed in the Public Commercial Vehicles Act. Again, it is a very important part of the fitness process and the fitness evaluation which will be done under the new system and all truck operators will have to hold a commercial vehicle operator's registration.

With respect to performance monitoring, there are some review powers now but they are very rarely used. In the new environment—this is specifically Bill 86—very specific commercial vehicle operator registration monitoring will be carried out and stiff economic penalties can in fact be put in place.

Disciplinary review: Currently there is no mechanism for disciplinary review but, as I have mentioned in my summary, Bill 87 does in fact put in place powers with the Ontario Highway Transport Board which will allow it to review performance of both the private and the for-hire carriers with respect to the Truck Transportation Act.

The benefits of regulatory reform: Having just summarized its chief components, I think we have come to believe they will stimulate trade, hence the Ontario economy; they will enhance the competitive position of Ontario businesses using transportation services—flexibility is a very important requirement today—to create a net gain in jobs; more entrepreneurial activity will be possible under this system; to maintain a dependable trucking industry for the benefit of shippers rather than a system that protects truckers from competition, to reduce the cost of transportation through increased competition and to benefit the public through lower consumer prices.

Also, I believe it is important to reinforce that these benefits will have even greater impact in northern Ontario. They will be particularly pronounced there, where there will be greater competition and more service options for shippers, with a greater opportunity for local involvement in the trucking industry. The ministry has done significant evaluation and investigation in this area, and it is estimated, on the basis of a recent evaluation that we completed, that there were 43 million kilometres' worth of empty truck movements between northern and southern Ontario last year, 1987. That cost the Ontario consumer approximately \$34 million.

Regulatory reform, the ability of more people to compete, to enter and to participate in the trucking industry in Ontario will better enable the matching of loads between northern and southern Ontario, and that will significantly reduce these huge and unnecessary expenditures.

The ease of obtaining licences will allow truckers to be more responsive to market changes—we talked about the backhaul issue—service to new developments—for example, the mining industry in the north—and also, of course, the larger issue of rail line abandonments, which continues to be of significant concern to the provincial government.

The existing licence system restricts entry to the trucking industry. With relaxed entry requirements there will be more opportunities for both those large and small entrepreneurs to respond to the local needs. That is always of significant concern in northern Ontario.

Concerning issues associated with the passage of trucking reforms, there have been many concerns and differing views with respect to the timing and the content of Bill 88 and its companion pieces. Most of those concerns have been resolved through careful consultation with all interested parties. It must be stressed, though, that Bill 88 deals only with intra-Ontario licensing. Many of the concerns or issues raised are related more, if not entirely, to interprovincial or transborder trucking, which is regulated by the federal Motor Vehicle Transport Act.

I would caution committee members not to become preoccupied with those issues that are related more to transborder trucking, which is regulated through that federal piece of legislation and therefore outside the purview of the bills that are going to be in front of you.

Specifically, the concerns that have been raised predominantly by the trucking industry fall into a variety of categories, the first being safety. Truckers feel that reform legislation should not be enacted until all safety and enforcement measures are fully implemented. The minister indicated that most of the National Safety Code aspects are in place and that the balance and the commercial vehicle operator registration will be enacted by Bill 86. That CVOR will be a key element of our enforcement activity and will be applied to all operators in Ontario.

In the United States, just as a matter of note, truck accident rates are decreasing while truck miles are increasing. United States Federal Highway Administration statistics in 1985 show that truck fatalities are down 13 per cent since 1979 and truck injuries are down 10 per cent in the same period.

The issue of reciprocity: Truckers fear that United States carriers will have easy access to Ontario markets while Ontario carriers will continue to have difficulty obtaining intrastate authorities. Those same truckers have indicated a desire to have a reciprocity clause placed in the Truck

Transportation Act limiting access to Ontario markets to carriers who come from jurisdictions that allow easy access to Ontario carriers.

Ontario carriers do in fact have, and have had, easier access to US interstate authorities since 1980. The federal government in the United States did deregulate the trucking industry. Between 1980 and 1985, more than 500 Ontario carriers got Interstate Commerce Commission licences, more than in the previous 45 years of American regulation.

Access to the US intrastate markets is not restricted solely for Canadian carriers. The access is difficult for all carriers. It is a fair system; those tough rules apply to everyone.

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Federal customs and immigration laws require that domestic trucking be performed in Canadian trucks with Canadian drivers. Those rules have not changed. Therefore, to operate an intra-Ontario, within-the-province licence, a United States carrier would have to establish a Canadian-based operation employing Canadians.

A reciprocity clause, we feel, could also easily be circumvented. Ontario believes all carriers should be treated equally. There should not be a different set of rules if you come from Ohio than if you are applying within Ontario. A reciprocity clause, in addition, would appear to be unconstitutional.

In 1982, when the US Congress imposed a moratorium on Canadian carriers seeking international authority, it was felt by truckers in Ontario that such an action was wrong. Now, it is being argued that it is acceptable for Ontario to have two sets of rules. Does that mean, in fact, that we are going to prove the Americans correct: one for dealing with carriers from jurisdictions with restrictive truck entry controls and another for carriers from jurisdictions that have relaxed entry controls?

If Ontario placed restrictions to entry of the United States carriers seeking authorities here, it is probable, and in fact possible, that the United States would retaliate and place restrictions on one or more of Ontario's key economic sectors over and above trucking. There are many levers available. We have seen the situation when the Americans chose to use shakes as a lever. Perhaps steel imports would be the next.

The Ontario Trucking Association has also asked whether, if the import of Ontario steel to the US were prohibited, Ontario would allow the import of US steel into Ontario. They say this is an analogous intrastate reciprocity. In the argument, they have tried to equate the activities of an American publisher or brewer or steel producer selling American-produced products directly to Ontario with the activities of an American trucker who seeks to operate in Ontario under the new regulatory climate of Bill 88.

This comparison is not valid, because the examples used all concern international trade tradable products. This is not the situation we are contemplating with Bill 88. The laws of Canada and the realities of the trucking industry dictate that an American company operating in Ontario must have a base of operation in Canada, if not in Ontario.

What is being compared, therefore, is international trade with a trucking operation that would function entirely within Ontario. The analogy

relates to transport or trucking which is not covered by the Truck Transport Act. For example, if an American steel company wanted to establish a plant in Ontario, we would likely encourage them. This is a situation that is more analogous than the one being described.

Moving to another area of concern, the denial of licences, Bill 88 allows the Ontario Highway Transport Board to hold a public interest test if a case is made that the granting of a licence would have a significant and detrimental effect on the public interest. If the board finds that public interest would be so affected, then it could limit, for the first four years, the number of vehicles that the licensed operator would be allowed to have function in the province.

There is a proposal that the board be given the right to deny a licence outright as a result of that public interest test process. The federal Motor Vehicle Transport Act and Quebec legislation both have that particular provision.

In Ontario the approach we have taken is that it is better for carriers, since the gradual phasing-in of carriers who pose a threat through four years of fleet restrictions will give the existing industry time to adjust. That phase-in period is extremely important. Thus, there will be less of a problem when the public interest test is lifted after the sunset takes place five years hence.

Restricting a licence over the first four years will protect the public interest. The value of the five-year transition is lost if existing carriers do not have the opportunity to adjust to the new entrants.

The comparable situation in Quebec, however, is that when the public interest test is removed, carriers who have previously been denied licences will be able to enter that market without any constraint.

Another issue that has been raised is the one of nondriving jobs being lost. There has been a claim that American companies operating within Ontario will carry out administrative functions back in the United States.

We have very specifically conducted interviews and canvassing with the major US trucking firms that currently operate in Ontario. They all indicate that nondriving jobs are not performed in the United States. It would be impractical to run an Ontario-based trucking company from a US location. Again, this is a business and an industry where you need to be close to the people whom you serve and the shipping public that is demanding your services.

The municipal position on deregulation: About 200 municipalities across Ontario were approached by the Ontario trucking industry to rally their support for their position on regulatory reform. A handful of municipalities have endorsed that position, but there are a handful of municipalities that also support the legislation. Those particular supporting municipalities predominantly come from the north.

The issue of competitive advantage: Truckers hold that US carriers participating in international trucking enjoy a competitive advantage over Ontario carriers in terms of costs, shipping rates, revenue, reduced taxes, depreciation, etc. This again is a transborder issue. It is not an issue that we can address specifically with the Truck Transportation Act.

Free trade is a very topical and much-debated topic of late. Some members of the trucking industry have said that regulatory reform is de facto free trade. Again, this issue is relevant only to transborder traffic, not something that the Truck Transportation Act can affect.

The TTA and its companion legislation are not related to free trade. There is no specific reference to transportation in the free trade agreement. The benefits to the Ontario economy from regulatory reform are extremely desirable and far outweigh the confusion with the free trade issue.

As a footnote, the major American companies that are already operating in Ontario—and they include some that you see most often on the large roadways in Ontario: Canadian Freightways Eastern Ltd., Yellow Freight System of Ontario Inc., United Parcel Service Canada Ltd., etc.—already operate in Ontario as part of the provincial trucking industry. They are very competent and solid Ontario corporate citizens.

The shippers' concerns: There are a variety of concerns that the shipper community has raised in the past. They include some of the following.

The public interest test: Shippers do favour easier entry, but they do not want the public interest test. They want a fitness-test-only system to be in place. The five-year public interest test will serve, though, as a transition period. We believe it is extremely important to ensure that there is minimal market disruption in that transition period.

Safety concerns: Shippers have generally indicated to us in the past that the national safety code is overdue and provisions should be made to ensure that enforcement capabilities are appropriate.

The code is a very important aspect of the reform package, and the commercial vehicle operator registration system is designed to ensure that it is effectively enforced. To ensure that those enforcement capabilities are not compromised, Management Board recently authorized salary dollars to allow 32 new enforcement officers to be hired and to be added to the enforcement ranks.

Timing: Numerous shipping groups have stated that regulatory reform is long overdue and that the new legislation should be implemented as soon as possible. We appreciate the long time frame over which these initiatives have been debated. We are very supportive, though, of that consultative process and we recognize the need to proceed to implementation as soon as possible.

The issue of rate publishing: Some shippers believe rate publishing provisions of the proposed legislation are redundant and should in fact be withdrawn. In the new environment, "published" will mean available in writing on request, and that will range from publication in a book or a price list to posting on the office wall or having prices in a file—much more flexibility than the old system. Rates, in fact, could be set by a contract between a trucker and a shipper and may be kept confidential.

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The impact, then, of regulatory reform in Ontario is, we believe, not to be nearly as severe as what happened in the United States in the early 1980s. Unlike the American experience, reform in Ontario will take place in a post-recessionary period with projected stable economic growth.

Many of those new entrants will formerly be the illegal truckers whose status will be made legitimate under the new regulatory environment. Deregulation will result in faster inventory turnover because of the improved availability and levels of service we expect under the new regulatory environment—again, being sensitive to the just-in-time delivery requirements of the manufacturing industry in Ontario. Aside from freight cost savings, businesses will be better able to control those inventory carrying costs.

Some of the more compelling benefits of reform, therefore, can be summarized as follows: first, to stimulate trade and the provincial economy; second, to create a net gain in jobs; and third, to benefit the public through lower consumer prices.

In conclusion, therefore, the changes that bills 87 and 88 will bring about are long overdue. The Public Commercial Vehicles Act is an antiquated piece of legislation that does not reflect the current economic environment in Ontario. The existing rules protect the licensed carriers by restricting any new entrants, and with limited competition, innovative services are stifled and transportation costs are frequently higher than they should be.

Discussions and consultation with industry representatives, shippers and other interested parties have taken place over the past 12 years. We believe this to be a solid compromise package.

Of course, there are safeguards in the legislation that will protect the public interest, and they include the fact that a licence-holder must be deemed to be safe and fit. A public interest test does allow the government to restrict fleet size and remove the threat of market disruption, and also, there will be a very broadly based advisory committee reporting directly to the minister that will monitor its impacts.

The concerns that have been expressed by some groups about reform have been addressed, I believe, through these safeguards, and the government has built them into the legislation. The government believes strongly, therefore, that these reforms will create an environment that allows the industry to operate effectively and efficiently to serve the shipper, the manufacturer and, most important, the consumer in today's economic environment.

Mr. Chairman: I think the package you put together is a helpful package for members. There has been an indication of a lot of questions from members. I thought it would be fair if we started off by letting the two opposition critics ask their questions, and then we will take three. Is that all right?

Mr. Morin-Strom: I am pleased to see that this bill is finally coming before the public and that a relatively full set of public hearings is going to be available over the three weeks that have been provided. It would appear we have quite an agenda of participants who will be bringing forward their points of view on this bill. Certainly in terms of the specifics of the bill we will look forward to hearing the kinds of proposals the public, particularly those intimately involved in this industry, want to present to this committee before we lay out specific positions on the detail of the bill.

I think the statements this morning went into a little more depth than I had anticipated. The minister had indicated before that he was going to spend 20 minutes, and I guess he had not indicated that his assistant deputy minister was going to go on and, in total, we would be here for an hour before we had a chance to react to their positions. I would hope that we will have

the opportunity to get further questions answered, beyond the limited time we will have remaining this morning, as our hearings go on.

Over the past couple of years, the minister has contended that these bills in fact were not deregulation but a matter of reregulation, and it would appear that we are getting a little more honesty at this point from the minister, and certainly from the assistant deputy minister, who are now admitting and calling the bills deregulation bills and addressing what they view the impact of deregulation in this industry to be.

Certainly there is a considerable dispute about the benefits and liabilities of deregulation in various industries, particularly in the transportation sector. The ministry has made various claims here about benefits from deregulation, but they are all of a very general, generic form, focusing primarily on cost savings to consumers and shippers and, potentially, improvements in services that are going to be available.

I do not see any specifics in terms of the benefits of this legislation, and I would ask the minister what studies they have to support their contentions and to provide the specifics of the benefits and impact that this legislation will have on the public and the businesses of the province. Could the minister tell us about the specific studies they have done and table those studies for the committee?

Hon. Mr. Fulton: There have been some economic studies done—they are certainly a matter of record—from the industries on both sides, from other jurisdictions and from what our staff have put together, in terms of the economic benefits. It is well understood that transportation forms a major proportion of the cost of products and equipment and whatever goes into a manufactured good, running as high as 55 per cent in some instances. I would ask Ms. Kelch to give you the details of specific studies and see what we can table before this committee.

Mr. Morin-Strom: Are we going to get the studies?

Ms. Kelch: I guess the very specific answer to your question is that obviously you cannot do a study, in terms of the absolute benefit, until the changes have taken place. There is, however, a lot of evaluation that we have done, a specific study, to which I referred, in terms of the economic disbenefit under the current system with the empty backhaul movements from the north, is available. That is a very significant cost to the shipper and the recipient of those products today in Ontario.

In fact, the figure I used was a 34 per cent increase in cost that they are being asked to absorb and to adhere to today and that they would not be if there were a more flexible environment that allowed a better matching of backhauls with front-hauls out of northern Ontario into the south and return.

The major study—I will use your term "study," although I would not call it a study—is the results of the reformed environment in the United States. If we look at the specific benefits that have occurred in the United States, they are significant. Some of the figures I used earlier in my presentation show that in fact there has been an increase in the overall number of jobs, there has been an increase in the size of the industry and there has been better service.

Mr. Pouliot: That is inaccurate. I want to come back on that.

Mr. Chairman: Order.

Mr. Pouliot: We have different studies. I do not wish to be misled in terms of jobs. There have been a hundred thousand jobs fewer, and let it be a matter of record.

Mr. Chairman: You are on the list too to ask questions. Go ahead, Mr. Morin-Strom.

Mr. Morin-Strom: The only specific we have now in terms of the savings is a contradictory statement. First of all, your published statement said it was a \$34-million saving on the backhauls from northern Ontario. Now you are saying it is a 34 per cent saving.

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Ms. Kelch: I am sorry; I correct my comment. It is \$34 million.

Mr. Morin-Strom: That, I take it, is a very small percentage of the total cost of trucking in Ontario. I do not have the figure—I am surprised you have not presented it—but it is multibillion dollars, the total shipping costs in a year in Ontario. Again, I would like to see those studies.

Obviously, the other thing that has not been talked to at all is the fact that you have no language, no mention whatsoever of the impact of this legislation on jobs and wages in the province. I am amazed you could go on for over an hour speaking about this bill and not once mention jobs or wages in this industry or the province as a whole.

I really would like to know what studies you have done and what impact you project on the number of jobs in this industry here in Ontario and the potential for a drastic reduction in wages if the American practice holds and we see a massive shift from relatively high-wage firms, particularly unionized firms, to contracting out and nonunion jobs. I would like to know why you have not talked about jobs or wages in your presentation this morning.

Hon. Mr. Fulton: With respect, there are probably other topics that could equally be included, but in fairness, to give you the time you wanted to ask some questions, we tried to restrict our input this morning to about an hour, as we indicated to you before we started. There are probably other issues you may raise as we proceed, but by not addressing that issue specifically, by no means did we in any way minimize it or demean it or think it unimportant.

In fact, the American experience is that the total jobs within the industry were in a plus position. The figures you have used, I believe, were taken during a time of severe recession in North America, back in 1981 and 1982, when jobs were being lost in any number of sectors. In fact, the net gain in the industry has been on the positive side. I think your problem, the concern you are raising, may be that there are not quite as many Teamsters jobs as there used to be, but the total effect on the net employment within the industry shows an increase.

Ms. Kelch: That increase in the United States is in excess of 22 per cent. Following the reformed environment in the early 1980s in the United States, you are quite right that there was a trend towards nonunion jobs, but the overall employment has increased.

Mr. Morin-Strom: I would presume wages are one of the biggest components of the cost of the trucking industry. Your contention, although you do not have figures on it, is that we are going to have big savings in terms of freight rates and the cost for shippers to truck their product. If that saving is not coming from a big reduction in wages being paid in the industry, where is the saving going to come from?

Ms. Kelch: Obviously, part of it will come from wages. Certainly, it is the past record not only in the trucking industry, but in a variety of industries in the country that unionized wages do tend to be slightly higher.

What really is going to happen, what has happened in the trucking industry in the United States and will happen here, is that there will be more choices. There will be smaller operators able to service shippers in a very explicit, direct and personalized way that has not been possible in the past, because those individuals have not been able to be part of the industry. Because of that, there will be efficiencies.

More specifically, the reason I quoted the investigation we did is that currently a large part of the cost is an empty backhaul. The shipping industry, i.e., the on-the-water industry, has that same challenge in Canada, but so does the trucking industry in a very direct way. If you are only operating full half of the way, you have to spread that cost back to your shipper. If it is full in both directions, then the absolute cost can come down.

Mr. Morin-Strom: And certainly, the number of trucking jobs goes down proportionately as well.

Ms. Kelch: No, I do not believe that to be the case, sir.

Mr. Pouliot: We will start shipping our mineral concentrate by truck, I guess.

Mr. Morin-Strom: I think that is my comment for opening; I would like to give some time to other members.

Mr. Chairman: I would never want to restrict the opposition from criticizing the minister, but to be fair, we did know that the minister was going to take about an hour and we did ask them to give us an overview of the two bills to assist the members as we begin this process. We did expect it; at least, we did. Perhaps we did not pass it on to members of the committee that there would be about an hour this morning.

Mr. Wiseman: I would like to thank the assistant deputy minister and the minister. I think the assistant deputy minister helped clarify, for most of us who have been over the bill a few times, even some more points, but I have some concerns.

I am for the bill to regulate the trucking industry, but as I mentioned in the House when we were discussing it, I would like to see the truckers play from a level field or as close to level as we possibly can. In talking to some of them in my area and others, there are some problems I see that I do not think have been addressed, and that should be before we get into this, because as a receiver in three or four stores of the goods that are shipped, like any other person out there in the retail end, I certainly do not want to see our

Ontario trucking industry weakened by this bill and I am sure the minister does not either.

There are some things I mentioned there and I just wondered if we could have tabled—I hate to get involved with tabling—any correspondence since we debated it in the House on the three areas where, as I see it, the provincial government could assist truckers.

As we know, down in the United States when they brought in the trucking bill, they gave some incentives to the truckers to try and cushion the blow. I see it here that with the second largest province to the east, the provincial tax they pay there is about one third of what we pay in Ontario. That, to me, is a disadvantage. Provincial tax is 15.5 here in Ontario; it is 5.9 in Quebec. We could do something about that.

I would like to see where the minister or the ministry have talked to the Minister of Revenue (Mr. Grandmaitre) provincially about reducing that to make us more competitive with Quebec, because we have a lot of runs into Quebec, from Toronto to Montreal and so on and back the same way.

I would like to see it in the sales tax. They do not have to pay tax in the United States on their rigs, as I understand it, either the trailer or the tractor. We know that can be done because Frank Miller did it back in the 1980s to help the trucking industry. To have them adjust, that is something we should do. I would like, again, to see any correspondence that has gone from the minister's office or through the minister to the Minister of Revenue here in the province to ask that this sales tax be taken off, even for a period of time until they adjust.

There is another thing I think we can do something with as well. I suppose there should be correspondence with the Treasurer (Mr. R. F. Nixon) and we should have some of that on file. I do not think it is just enough to talk to him in cabinet or talk to him over the phone and this sort of thing. I think it should be on the record that we have requested that.

The other is the fuel tax and the cost of fuel. I am told by one of our largest carriers in Ontario, Mr. Perkins of Taggart Service Ltd., that it works out to about 76 cents lower per gallon for diesel in the United States than it does in Ontario. We have jurisdiction over that and if we really want to get back to making it a little fairer competition for our people, then I think we should do that.

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I understand too that down in the United States, very few of our trailer manufacturers of Ontario or Canada are very busy these days because people like the Joe Perkinses of Taggart—I believe Canadian Pacific Express and Transport is buying south of the border too, and there are two or three others that are buying up franchises across the border. I think CP is somewhere in the Detroit area.

Joe Perkins is around Syracuse. He told me, if I am quoting him correctly, that he has about three he has purchased down there. He is buying trailers down there and they are finding their way up to Ontario, I am sure. He was telling me something. The truck is about 12 per cent lower in cost, to start with, plus there is no sales tax on it. It is a great advantage. He also

has a garage, so he can probably buy them cheaper than others, being a full General Motors dealer.

The other correspondence I would like to see is where you do not have any jurisdiction, minister, and that is with the federal government in the write-offs of those trailers and trucks. I would like to see some correspondence where we have asked the Minister of Transport, Mr. Bouchard, I believe it is, if he would talk to the Minister of Finance, Mr. Wilson, about perhaps reducing that. It is quite an incentive as a businessman when you can write a thing off in four to six years versus 13 years in both cases for us up here. That is really an advantage and it is putting our people at a real disadvantage.

When we are going into this, I just feel that we should not weaken—going back to it again—the trucking system we have out there. I agree with the assistant deputy minister on the backhaul, but that is always a problem. The deliveries are quite fast to our stores as far as I am concerned. If we want overnight delivery, we might pay a little bit more for it but we have the goods the next day. We can get that service and we are in small towns.

There is another part. I know it is probably going through as a regulation, but on the long hauls for cattle and other perishable goods, I understand the assistant deputy minister was at the last meeting at some place in the west, whether it was Saskatchewan or Winnipeg. There was some concern about that, that there would be further discussion and maybe regulation to cover people on long hauls. It is 10 hours of driving; five hours of checking or loading the rig.

The people who talked to me are people who own four or five tractors. They have said they can drive more safely in the daylight hours, but the way it reads now, I understand, they have to drive for 15 hours; altogether, 10 hours of driving and five hours of tests, checking the rig out and loading it. Then they rest for a number of hours and so on. Every second day or so, they drive all night. With most of us, our bodies are accustomed to sleeping when it gets dark, and for a person who travels Highway 401 from here to Lanark every week, usually driving, it would sure be nice in the evening to have some of those carriers off the road so there is a little more room for cars and not a convoy of almost eight or 10 in a row.

It would be safer. This chap who told me said he was a driver before he accumulated enough money to put these six or eight trucks together. Now he drives only when someone is sick. He would like to see it. He said he is a much safer driver when driving during daylight hours and resting at night, as all the rest of us do. If we could get a regulation like that in place for long hauls, cattle hauls or whatever, it would be really good.

I have some other areas I could get into too, but the basis of where I am coming from is that it is one thing to throw it off on to the federal government in the areas in which it has responsibility, but I think we have to keep after that because I am sure the officials and the minister certainly do not want to weaken the transportation system we have in place now but rather want to improve on it. The United States saw fit to give its people a chance to adjust to the changes and gave them some incentives. I think we should do the same.

Hon. Mr. Fulton: I probably should get a reprint of Hansard in order

to attempt to respond to the number of issues you have raised, all of which are very important to us.

A number of them, however, really apply to the federal government and the federal Motor Vehicle Transport Act. I think the matter of reciprocity is an issue we have discussed with our federal counterparts as well as other interested parties. It is really something that needs to be addressed through Washington with the Interstate Commerce Commission.

On the matter of taxation, there was a very temporary elimination of the provincial sales tax which was really designed to stimulate vehicle sales and not really to deal with entry into business. While it may have been beneficial, it was a very short term effort and has been applied, I think, in other areas from time to time to stimulate particular things.

The Americans, of course, deregulated, to use their term, in a very short period of time, between 1978 under President Carter to 1980 when they enacted legislation. We, of course, have been going through this process for 12 years or more, since 1977, certainly intensely for the past three years.

You, as a long-standing member, would be very much aware that we have taken something in the range of six or seven times the time period to get to where we are today. I think it should be a matter of record that there are a great many trucking companies out there which are very supportive, in writing, of getting on with the matter. You will be hearing from some of them.

In fact, the chairman has some news clippings here that I will not bother to read into the record, but there are people saying, "Let's get on with it." There are trucking companies saying it is not of any particular concern: "We have known about it. We are getting ready for it." I think that is important to put on record.

In terms of provincial taxes, federal taxes, gasoline taxes and so on, you asked for copies. We have written to our colleague the Treasurer and we have written to the federal Minister of Finance, Mr. Wilson, and others. We would be only too happy to provide you with copies of that correspondence. We can do that very soon.

I think you referred to livestock haulers, in particular, with the hours-of-work legislation. They can indeed receive a special permit. We are aware of the very specific requirements of hauling livestock. We are attempting to make provisions to provide for safe, humane haulage, both for livestock and, of course, in the hours of service and for the good health of the drivers.

Mr. Wiseman: Are there other long-haul shippers too, Florida shippers and this sort of thing?

Ms. Kelch: The last time, you and I spoke about this issue. We have evaluated and re-evaluated it. As you quite rightly stated, this is an across-the-country issue, this is not just an Ontario issue, because the hours-of-service part of the national safety code is in fact going to apply across the country.

We have had a very serious look at the livestock haulers and some of their problems because of the length of time they have to be on the road and also the nature of the commodity they are moving. We are prepared to give them some very special entitlement if they meet some specific criteria. However, to

give those same sets of deviation from the rules to a general commodity hauler is much more difficult for us. We are still looking at the long hauler—i.e., the individual who has to cross the entire country—but I am not that optimistic in terms of the ability for him to actually adhere to and meet the requirements of the permit.

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Mr. Wiseman: So at the present time, the chap I mentioned probably would not qualify. He does not haul cattle.

Ms. Kelch: That is right.

Mr. Wiseman: The only one you are really sure of is the cattle hauler.

Ms. Kelch: Or if you have a commodity that will deteriorate quickly, tomatoes or that kind of thing.

Mr. Chairman: Is there anything else? There are rumblings from the committee members about some time-sharing.

Mr. Wiseman: There were just two I missed. One is that I am getting quite a few complaints. We touched on the area where you were going to try to get the federal boys to deputize your people at weigh scales or whatever to watch for shippers who pick up from the United States and drop off in more than one stop. I understood that the federal government would not give that sort of deputization to the provincial fellows. Maybe I am wrong.

I understand it is pretty widespread that they will stop more than once. As I understand it, they can bring a load to Toronto. If, somewhere between here and Detroit, they can take a load to Toronto, drop it in Windsor or somewhere on the way back, that I guess is legal. But if they stop in St. Catharines, Hamilton and then Windsor or somewhere, that is illegal. I am told that it is quite a frequent occurrence. This worries somewhat the truckers who have spoken to me as well.

There is one other thing, quickly. I mentioned about some of them setting up in the United States—CP, Taggart and so on. There are some people thinking that they may move part of their senior operation to the United States, because I guess if they are going to buy trailers and do a lot of the major purchases and so on, they should be down there. We could lose not only the trailer-building business and one thing and another, but we could lose the key personnel who are pretty highly paid if they move them down south of the border as well. Whether it is threats or whether it is actually going to happen, it is there. I understand from some that is their intention if we kind of force them into it. That is why I was hoping you could move on some of those other tax incentives.

Hon. Mr. Fulton: As I mentioned, correspondence and certain personal appeals to the provincial Treasurer (Mr. R. F. Nixon) and the federal Minister of Finance, Mr. Wilson, have been made. Letters have been sent to the respective ministers, in terms of customs, immigration and excise tax, expressing a sharing of your views to see how these matters can be addressed with their co-operation. We are anxious to resolve that as soon as possible.

The movement of business of any definition between the two countries has been ongoing for years. In the very last figure I was given, I think there was

something in the range of 1,100 Canadian trucking companies operating, at various levels of size and success, in the United States. This has been going on for years and years, but somehow that seems to get lost in this whole dialogue. We are doing very well as Canadians in the American market.

Mr. Chairman: Can we move on and then we will come back if there is time?

Ms. Kelch: May I just offer one point of clarification on Mr. Wiseman's comment? That is the issue of certain large corporations relocating to the United States. You used one firm as an example, i.e., CP. I think it is important for the record to state that is in fact not what has happened. They are obviously looking at acquisition and presence, from a subsidiary point of view, in the United States, to position themselves to compete in that environment. They will continue to do it, but there has been no move for them to move the kind of—

Mr. Wiseman: Not at present.

Ms. Kelch: —head office senior jobs, as you call them.

Mr. Chairman: OK, thank you. I have quite a substantial list here.

Mr. McGuinty: On a point of order, Mr. Chairman: I do not know how you run this committee, but I do not like the way you run it. First of all, on the standing committee on administration of justice dealing with Sunday shopping, we have a 20-minute limit on presentations and questions. You have allowed Mr. Wiseman to go on for 26 minutes, not with pointed questions but with elaborate, prolonged editorial comments, which in effect is depriving us of questioning our guests. Can you not put a time limit on the questions and ask the opposition to spare us its editorializing?

Mr. Chairman: I think, to be fair, there is a long tradition when any process begins around here of allowing the opposition critics to have their day. I think that is what we have done, and I do not think it has been unreasonable.

Mr. McGuinty: They have had their day—the whole day.

Mr. Chairman: I know, but there is a long history of that here, and I do not think it is unfair.

Mr. McGuinty: It is a custom that should be observed in the breach, not reserved.

Mr. Pouliot: I think the honourable member should voice his frustration at the Sunday shopping, he has more than enough on his plate there, rather than to jouer des enfants gâtés in this committee.

Mr. Chairman: That does not even remotely resemble a point of order.

Mr. Polsinelli: I would like to thank the opposition members for leaving some time. I would also like to thank Mr. Morin-Strom for pointing out through his questioning that the experience in the United States has resulted in a 22 per cent increase in employment in that jurisdiction—

Mr. Morin-Strom: I do not think I pointed that out.

Mr. Polsinelli: —and Mr. Wiseman for pointing out that many of the issues that were raised are really of federal concern.

What I would like to do, quite frankly, is ask a couple of questions so that I could perhaps better understand this legislation. Both the minister's comments and Ms. Kelch's comments indicated that this package contains both a fitness test and a performance monitoring test. While I can appreciate what a fitness test would be, not being that familiar with the trucking industry, I would like to understand what performance monitoring is. That is my first question: what is performance monitoring? Perhaps you can explain that facet of the package for me.

Hon. Mr. Fulton: Basically, the performance monitoring is Bill 86, which has received third reading. It is the other bill in the package of three, as indicated earlier. I know no one in this room would be familiar with the demerit point system, with your class G driver's licence. No one here, I am sure, would have breached the Highway Traffic Act, but it is a similar kind of system where we can keep track of the operations of a driver and of the rig, if I can use that term, and accumulate information on a particular company.

As an example, when we opened the new weigh scale station this side of Windsor, I saw that the operator, by pushing a few buttons, could tell us who were the major infractors of violations of weight and axle loads and other violations of the Highway Traffic Act in the bills before us. Essentially, and I will ask Ms. Kelch to elaborate, it is keeping track of a similar system to the demerit point on your class G licence.

It will be very heavily enforced. We have a number of people out there. We have added and have received budget approval and, in fact, I think hired most of the new people, or many of them, in order to enhance the on-road complement of inspectors and enhance our ability to keep undesirables and people who consistently and continually break the law off the roads and out of large vehicles. That basically is what commercial vehicle operator's registration, which is in Bill 86, is all about. I will ask Ms. Kelch to elaborate.

Ms. Kelch: Just continuing on the minister's comments on the commercial vehicle operator's registration, what Bill 86 does is allow for the requirement for the registration. He would actually hold a number as an operator of large commercial motor vehicles in the province.

The only slight deviation in terms of the minister's analogy vis-à-vis the demerit point system is that it is not automatic. What we do is we monitor through a computer-based system the operating record of each of the holders of the registration, and there is a tolerance level, depending on the size of your fleet and the type of operation you have in the province. When you meet that tolerance level, you are called in for an interview or a discussion, and ultimately we have the authority to pull the plates from the vehicle.

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Mr. Polsinelli: Thank you. I think that has been fairly helpful. I have a number of questions regarding reciprocity, and I think there will be ample opportunity during the next couple of weeks to discuss those.

What I would like to deal with right now is basically part of the underlying philosophy of this legislation. I have heard in both your statement

and Ms. Kelch's statement that part of the underlying philosophy is that the increased competition will inevitably result in lower transportation costs, therefore benefiting the ultimate consumer, which we hope will be us, in the long term.

If that is an underlying philosophy, then what are your criteria and what is your justification for effectively delaying that benefit for a further period of five years? If you do have this five-year transition period where the Ontario Highway Transport Board will still be looking at the public-interest test to determine the new entries into the market, effectively, are you not saying, "We are going to be delaying this legislation, or the benefit of this legislation, for a period of five years, and after five years we will determine whether or not there is going to be a sunset review and perhaps delaying again the implementation for a further period of time"?

Hon. Mr. Fulton: I guess there is a long history attached to the question. Very simply put, it is a matter of turning the tap off completely or turning the tap on completely.

I think it is important to understand the dramatic shift in what is happening in the transportation industry away from the Seaway, as it affects Ontario, but particularly the offloading from railways. It has been tremendous in the past five or 10 years, and the projections that we have been presented with over the next 20 years or so will be even more dramatic than what we have seen.

The trucking industry is growing extremely quickly because of this—it is not a trend; in fact it is a business case where companies that were engaged in both or all three components were enhancing their trucking operations. There are a lot of opportunities for people to get into the business because it is simply going to grow. You would only have to go home and look through your own riding to see what is happening. Right here, there are something like 700,000 truck movements per day in Metropolitan Toronto, and however that projects across the province. As an example, the new GM plant in Oshawa is going to generate 1,300 truck movements a day from one factory in Oshawa. That growth has partially brought us to where we are, and I think we need to be able to address that.

One side of the argument was to get rid of the public-interest test or any other kind of constraint or restraint that would hinder anybody from entering into the business. The trucking side, of course, wanted some kind of a public-interest test. Initially, when the federal government was moving on its legislation there was a one-year public-interest test being proposed.

As a compromise in Ontario, we are looking to three years for that transition period so that everybody could adjust to whatever adjustments might be necessary. We met with the federal Minister of Transport, Mr. Mazankowski, in April 1986, and recommended that they extend their period of time. Over a period of consultation and negotiations, it was arrived at five years as being the ideal transitional period. Not everybody agrees with that. Many in the shipping end of this argument would just as soon have it five months or less. Other people, the trucking industry, probably would like it to go on and on.

This is one of the reasons we incorporated the advisory committee as a piece of the legislation. Regardless of the minister of the day, that committee or advisory group, made up of all components of the interested parties to the industry, will be able to report to the minister of the day and

the government on whether it should be lengthened, eliminated at five years, or any other matter related to it. But the five years is probably only simply put as a major compromise from all parties, not agreed to by everybody, but now accepted, I think, by everybody.

Mr. Chairman: If we go until 12:30 and members are brief and responses are brief, we should be able to look after the wants of most members.

Next on the list is Mr. Pouliot.

Mr. Pouliot: Merci, M. le Président, et bonjour. It is nice to see the minister finally candidly volunteer that we are talking in terms of what everyone else has been calling the bill for clarity, namely, deregulation. We have argued for over two years in the House—

Hon. Mr. Fulton: On a point of order: I have not used the term "deregulation."

Mr. Pouliot: It has been used by your very able and appreciated assistant deputy minister, with the highest of respect. Maybe next week we will be talking about free trade—one way, that it is. When we talk about this bill, I have some problems in terms of what people mean or what they say in terms of free trade. When it is one way, when it is a different way, you cannot quite call it trade or free trade.

Just as important, I have a couple of questions because I want to situate myself and you will help me. On page 14 of the presentation, it says, "More competition will result in lower transportation costs—lower prices for consumers." The airline industry has been deregulated for some time. Are there more air carriers or fewer air carriers?

Hon. Mr. Fulton: More capacity.

Mr. Pouliot: I am not a child. There are fewer air carriers and prices have not gone down, sir; they have gone up. The analogy is that in California—

Hon. Mr. Fulton: I do not know what airline you fly. Whether you own it or I own it, there is more capacity in the air.

Mr. Pouliot: For your information, 350 truck carriers with deregulation in California alone went out of business after 1980 because of takeovers and mergers. I asked the Premier (Mr. Peterson) in the House in the minister's absence a question regarding reciprocity. What reciprocity clause do you have under Bill 88 with the states of Ohio, Michigan and New York?

Hon. Mr. Fulton: You know full well that we do not. We are dealing simply with the entry, your ability to get into the trucking industry in this province—that is the essence of the issue before us—so that you or your neighbour, in order to serve the remote areas in your riding, can get into the trucking business without the encumbrances that they have experienced for 60 years.

Mr. Pouliot: What if I am from Michigan? Can I enter the Ontario market, sir?

Hon. Mr. Fulton: As an Ontario operator, yes.

Mr. Pouliot: So I could set up shop with 180 square feet and a dispatcher and I could enter the Ontario market. What kind of reciprocity clause do you have in your deregulation bill?

Hon. Mr. Fulton: You must use Ontario drivers and Ontario equipment.

Mr. Pouliot: But I am talking about reciprocity. What about my access to the Michigan market?

Hon. Mr. Fulton: In some states, you have the ability, but neither does an American have any easier access of entry in certain states than you would have.

Mr. Pouliot: When was your last trip to Washington to negotiate reciprocity clauses?

Hon. Mr. Fulton: It is within the jurisdiction of the federal minister to do so. We have certainly met with our ambassador and the issue was raised at that time, but it is not within the purview of a provincial minister to go to Washington and negotiate federal legislation.

Mr. Pouliot: Have you sought an opinion from the Attorney General's office regarding whether a reciprocity clause on Bill 88 would fly?

Hon. Mr. Fulton: You are well aware that our legal counsel have advised in the negative way. It would be unconstitutional. We cannot apply a reciprocity clause.

Mr. Pouliot: It is ironic here because of what the firm of Gowling and Henderson said. I guess you have some latitude. You can commit a multitude of sins and you can issue a directive to the Minister of Transportation. I am talking here about the Attorney General. Yet when you are talking about your colleague, because he worked for that firm or he has counsel with that firm, Gowling and Henderson, they said quite otherwise. They said yes, it would be constitutional to have a reciprocity clause with individual states as part of Bill 88 to negotiate that.

Hon. Mr. Fulton: I am sure if you got a third opinion you might get something different. I made that very clear in my opening statement.

Mr. Pouliot: You made it clear. You said, "More competition will result in lower transportation costs." Will you accommodate us with the tabling of statistics on that? Am I right to assume that the costs will be lower next year than they are this year? I live in Manitouwadge in a community 750 miles from here. With deregulation taking place, I can look forward to lower costs?

Hon. Mr. Fulton: That has certainly been the experience. We will table with you, as we indicated earlier, any information we have.

Mr. Pouliot: Drawing from the experience in the United States regarding safety, we are all very much concerned with the safety aspect. When the regulation was implemented in the United States, was it safer, the same or less safe?

Hon. Mr. Fulton: You are very much aware that when we went to the United States, we talked to various interested parties, and we have made this

point over and over. The one thing they did not do and the one thing they would have done differently was incorporate something similar to Bill 86. They did not do that. When we talked to them and other members of my staff talked to them, they saw that as the single biggest deficiency in the manner in which they proceeded. If they were to have done it again, they would have incorporated that.

In fact, in the past two or three years, the Americans are adopting a number of Ontario, if not Canadian, practices when it comes to single licensing of drivers and so on. They are adopting a number of the manners in which we do business. But I can repeat, from the National Trucking Association to every other party we talked to down there, the one common thread through all those discussions was that they did not incorporate the safety features in their deregulation bills, and we have done that.

Mr. Pouliot: You mentioned that you have consulted with many truckers in Ontario—and of course you would have—inviting them to share with you their concerns and possible amendments. You must be aware that those truckers, some 800, are represented by the Ontario Trucking Association, whose views are diametrically opposed to your views regarding Bill 88, which is the main one. How can you say, on the one hand, that there are many truckers—and some of them will appear in front of the committee—when you know very well, on the other hand, that the brief of the Ontario Trucking Association opposes your attempt to push through Bill 88?

Hon. Mr. Fulton: We have heard from, and I expect you will hear from, and we have correspondence from people in the trucking business who are very much in support of this initiative.

Mr. Pouliot: Yes, but their organization, which is made up of those same truckers, is saying it is opposed.

Hon. Mr. Fulton: I can remember a vote in the House in June when not all the members of your party stood up with your leader either. That happens. Not everybody agrees with the stance of the executive of the Ontario Trucking Association.

Mr. Pouliot: Those words may come back to haunt you. There are only 19 of us, but thank you very much.

Mr. McGuigan: My question is to the assistant deputy minister. Just for clarification, on the five-year provision for public interest test in rare cases, I would like you to explain a little more what you mean by rare cases.

Ms. Kelch: I guess from the beginning, at the federal level with the Motor Vehicle Transport Act as well as in our provincial deliberations with the Truck Transportation Act, it has been made very clear that there would have to be some very clear, resounding evidence put forward that the public interest was being challenged. Therefore, based on our judgement and what has happened in other parts of the country, we do not believe there are going to be many instances where the public interest will be challenged. If you meet the requirement of being fit as a potential operator of vehicles in the province, we believe that is the major hurdle you will have to meet.

Mr. McGuigan: So you are really not defining what a rare case is; you are just saying it is going to happen in a few cases?

Ms. Kelch: That is correct.

Mr. McGuigan: On the matter of intercorporate trucking, previously it was 90 per cent and now it is 50 per cent. The question in my mind is why have any percentage requirement if our philosophy is to try to increase competition within the industry? It seems to me we are encouraging, among other things, multiple ownership of companies in order to fall into this requirement of allowing intercorporate trucking. For instance, a trucking and manufacturing company in Toronto shipping to Collingwood can get a return load from Collingwood only if it owns 50 per cent of that company in Collingwood. Why not let them have a return load without intercorporate ownership?

Ms. Kelch: I think the broader issue is whether they are in the for-hire trucking business, and this is one issue that is similar to so many that the minister has addressed, and that is that it was an area of compromise. I think you are quite right. There were individuals in our discussion over the past several years who would have felt it was appropriate for these individuals to be able to move goods for anyone. There were others who felt they should be able to move goods only if they could prove they were 90 per cent of common ownership. The 50 per cent, I believe, represents a reasonable compromise position.

Mr. McGuigan: It seems to me that the real argument can be made for reducing that in cases where the distance is greater, for instance, northern Ontario. When you drive through northern Ontario and you see all those empty trucks coming back from northern Ontario, it seems to be such a waste and such a hardship on the people in northern Ontario and also a detriment to job creation in northern Ontario when those empty trucks are going back and forth.

I have looked at my own business, to truck fruit to northern Ontario. You realize when you get up, say, to Manitouwadge, 750 miles, you have a 750-mile backhaul in which you are empty; whereas if you could pull over to a paper company, throw on a couple of rolls of paper and deliver them to Toronto, you would reduce the cost of the goods I deliver to people in Manitouwadge.

Ms. Kelch: What you are describing is exactly what we believe the legislation will provide an incentive to do. Currently, there is a prohibition, because if that individual who was moving the fruit went to the board to try to get an authority to carry the paper or whatever back, he would be objected to and, therefore, most people do not bother. But in the new environment, where it would be much easier for you to be licensed for a variety of commodities, those empty backhauls would be reduced.

Mr. McGuigan: It bothers me, when we constantly hear our northern friends talking about the high cost of living there, that when we attempt to reduce that cost they object.

In the matter of nondriving jobs lost—and I have no evidence to back up my question—what about repairs of companies that are operating in both jurisdictions? Is there any tendency to drop off the trailer or the tractor in the United States for a few days, especially in the southern states, where they could get lower labour costs and perhaps some tax advantages, as my friend here has mentioned. Does that happen or do we know about any tendency in that way?

Ms. Kelch: I am not aware of the specific trend in that area, but I guess common sense would tell me that there are customs limitations to where you have that work carried out, but in terms of whether there is a general trend, I would have to investigate because I do not know.

Mr. McGuigan: You mentioned customs. If a Canadian trucker has an engine replaced in the truck in the United States and comes back to Canada, does he have to report that and pay tax on it?

Ms. Kelch: Yes, absolutely.

Mr. Wiseman: If he is an honest trucker.

Mr. McGuigan: I have never blown an engine in the United States, so I have not been put to the test.

You mentioned there were 32 new enforcement officers, and they are added to how many others?

Ms. Kelch: About 240; so we are up to close to 300 in strength with these additions.

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Mr. McGuigan: Those are my questions, thank you.

Mr. Chairman: Thank you, Mr. McGuigan. Mr. McGuinty?

Mr. McGuinty: I had three very good questions but I have forgotten them.

Mr. Chairman: Mr. Brown?

Mr. McGuinty: No, no. All right. You are a little too sharp, Floyd.

Mr. Pouliot's horsing around reminded me to ask you a question about the Teamsters. Have we had any reaction from the Teamsters' union regarding this legislation? I do not see that they are making a presentation here.

Mr. Pouliot: I could make a phone call.

Interjections.

Mr. McGuinty: But we have had no formal response, or no presentation that I see indicated here.

Hon. Mr. Fulton: I do not recall personally ever seeing anything on Teamsters' letterhead, but I think there has been something from a union local here or there.

Mr. McGuinty: OK. Second, in the matter of cost—

Ms. Kelch: Just as a point of clarification, they were on our early consultative committee, so they have offered their perspective.

Mr. McGuinty: Sure, but they are not making a presentation here.

Ms. Kelch: No.

Mr. McGuinty: So we assume, then, that they have no serious concerns about the implications of this. No news is good news from the Teamsters. All right. I do not want to say anything offensive, or I am going to end up in some cement overshoes.

In regard to cost, I met a trucker the other morning at four o'clock on Highway 401, fortunately at a restaurant, and I chatted with him. He was on his way to Chicago. He had a load on—the truck, that is. I asked him, "What are you bringing back?" I picked up the terminology. He said, "I'm coming back deadhead." I said, "No, I mean on your truck." He said: "That's a trucking term. I am coming back empty." So I said: "All right. Who pays for your trip back?" He said, "The guy who is paying for this load to go down."

We assume that if that fellow had a load to come back, the cost saving would be passed on to both people, shipping and coming back. How do we know that the cost saving will be passed on to the consumer? I never ask a question unless I know the answer to the question, but the answer is, "We don't know."

Also, on page 8, I am intrigued by the reference to the public interest test. It is a five-year provision, which is going to be invoked in rare cases, and on page 19 you refer to this again. This is a very serious business because it says, "if a case is made that the granting of a licence would have a significant and detrimental effect on the public interest." This is a serious business. What if we applied this to political candidates?

Hon. Mr. Fulton: A lot of us would be out of work.

Mr. McGuinty: What are the criteria? The shippers favour the easier entry but do not want a public interest test. What is a public interest test? What are the criteria? Monopoly or price fixing? Drinking behind the wheel? Public necessity? Could you elaborate on that, please?

Ms. Kelch: In the legislation itself—this is Bill 88—section 10 very specifically outlines the kinds of criteria that should be considered when investigating whether in fact the significant adverse impact is included.

Mr. McGuinty: All right. Thank you very much. I will check that later.

Ms. Kelch: It includes things like the existing industry and having a good look at it, and there are five specific categories.

Mr. McGuinty: OK.

Mr. Brown: The first question I have just relates to your excellent presentation. What I wonder is whether the ministry could put beside each of the points the appropriate sections of the acts so that when we come to do the clause-by-clause, we can easily have a look at where they are.

The second question is that I am wondering, although it is very early in the federal deregulation process, whether there are any studies or impacts on what has happened in Canada in the short period of time since January 1 in terms of rates, services, etc.

Hon. Mr. Fulton: One point is that there apparently are fewer American applicants in the same period. There are fewer American applicants for entry. That is one point. Ms. Kelch may have others.

Ms. Kelch: As you say, Mr. Brown, it is very early in the process. We have had the system in place only since the first of January. In terms of Ontario commenting on this, it is a bit of a challenge for us, since the Ontario Trucking Association very early decided that they were going to challenge the process we used to issue Motor Vehicle Transport Act licences.

So the rest of the country is certainly moving a little more quickly than Ontario is at this time.

Mr. Brown: One question: We have a lot of trouble comparing jurisdictions here because each jurisdiction has its own particular economy, its own particular geography, etc. Have you done any comparisons to prove that rates are better under deregulation and that service is better? I am thinking of the American experience.

Do we have any numbers comparing rates and service between, say, the state of Michigan, which apparently is highly regulated internally, and the state of Wisconsin, which is not? They seem to be relatively close jurisdictions, both being northern states and geographically somewhat similar.

Ms. Kelch: I am not personally aware of any. I guess I look at my staff in terms of any other studies they may be aware of with that level of detail of evaluation, but I am not personally aware of that analysis having been done.

Mr. Brown: Just one quick last question: Of the total truck freight business, what percentage of billings in Ontario would be intraprovincial and what would be extraprovincial? How much would be moving between provinces and how much is just totally in the province? It is just so we get a feel of what we are really looking at here in terms of trucking market.

Ms. Kelch: That number is not at the top of my head. Mr. Radbone, do you know?

Mr. Radbone: I think it is in the order of 40 per cent.

Ms. Kelch: Within the province only?

Mr. Radbone: No, 60 per cent within.

Ms. Kelch: And 40 per cent that moves cross-border.

Mr. Chairman: Would you repeat that for Hansard?

Ms. Kelch: Yes, 40 per cent of the trucking movements in Ontario would be cross-border and 60 per cent of the trucking movements are within the province only.

Mr. Brown: Thank you.

Mr. Chairman: Are there any other questions or comments from members? Mr. Pouliot, briefly.

Mr. Pouliot: Under the regulation, small, remote communities were sort of guaranteed that they would have a service provided. The regulation has been there for a reason, and it has worked quite well. Under the proposed deregulation, will we have the same guarantee or will we have to rely solely on competitive price markets, what the market will bear and our ability to pay for those services?

Hon. Mr. Fulton: You have no guarantee now under existing licences that indeed service will be provided. It is a fact of life. It is interesting the amount of support we have received for the legislation from northern communities and northern truckers, but there are companies with operating licences that do not exercise them in northern Ontario.

Mr. Pouliot: In regard to the backhaul, coming back or going back and forth and coming back with empty loads, concerning northern Ontario, you have said so accurately that Bill 88 would be seen as an invitation, that it would enhance the possibility of coming back with a load. In the real world, for instance, if you are hauling steel, you are not necessarily going to come back with cattle, because it is just not conducive to going back and forth with some load. I have searched long and hard in some of the 51 communities that I represent to find out what you could ship down south that you do not now.

Hon. Mr. Fulton: Obviously, various configurations of trailers prohibit the carrying of other products, but in terms of having an exact figure or percentage, I do not have it. Whether Ms. Kelch has something she can add, I do not know.

Mr. Pouliot: That is all the questions I have for the time being.

Mr. Chairman: If there are no other questions, we should adjourn now. We start again at two o'clock this afternoon with the Ontario Trucking Association. We have told all of the people making presentations to us that there is an hour allocated and that we would appreciate it very much if they kept their presentations to half an hour with the other half for members to have an exchange with them, so if we allocate that as closely as possible to 10 minutes for each caucus, I think we will get through it smoothly.

Thank you very much, Minister and Ms. Kelch, for your appearance before the committee. We invite you to come back at any time during our three weeks of hearings. We are adjourned until two o'clock.

The committee recessed at 12.10 p.m.

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STANDING COMMITTEE ON RESOURCES DEVELOPMENT

ONTARIO HIGHWAY TRANSPORT BOARD AMENDMENT ACT
TRUCK TRANSPORTATION ACT

TUESDAY, AUGUST 23, 1988

Afternoon Sitting



STANDING COMMITTEE ON RESOURCES DEVELOPMENT

CHAIRMAN: Laughren, Floyd (Nickel Belt NDP)

VICE-CHAIRMAN: Wildman, Bud (Algoma NDP)

Brown, Michael A. (Algoma-Manitoulin L)

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McGuigan, James F. (Essex-Kent L)

Miclash, Frank (Kenora L)

Miller, Gordon I. (Norfolk L)

Pouliot, Gilles (Lake Nipigon NDP)

Wiseman, Douglas J. (Lanark-Renfrew PC)

Substitutions:

McGuinty, Dalton J. (Ottawa South L) for Ms. Collins

Morin-Strom, Karl E. (Sault Ste. Marie NDP) for Mr. Wildman

Polsinelli, Claudio (Yorkview L) for Mr. Leone

Roberts, Marietta L. D. (Elgin L) for Mr. Miller

Sterling, Norman W. (Carleton PC) for Mrs. Marland

Clerk: Mellor, Lynn

Staff:

Richmond, Jerry M., Research Officer, Legislative Research Service

Witnesses:

From the Ministry of Transportation:

Fulton, Hon. Ed, Minister of Transportation (Scarborough East L)

Kelch, Margaret, Acting Deputy Minister and Assistant Deputy Minister, Safety
and Regulation

McCombe, C. J., Director, Office of Legal Services

From the Ontario Trucking Association:

Cope, Raymond R., President

Bradley, David H., Assistant General Manager, Government and Public Affairs

McGuire, Pat, President, Cathcart Trucking

McKevitt, John, President, McKevitt Trucking

From the Retail Council of Canada:

McKichan, Alasdair J., President

Woolford, Peter, Vice-President

Kaine, Lanny, Distribution Services Manager, Eaton's

Mikesch, Raymond J., Senior Vice-President, Distribution Services, Central
Canada Grocers Inc.

From the Board of Trade of Metropolitan Toronto:

Ramm, Gordon, Chairman, Distribution and Customs Committee

Maheu, Bud, Assistant Manager, International Trade Department

Gillelan, David, Past Chairman, Distribution and Customs Committee

AFTERNOON SITTING

The committee resumed at 2:02 p.m. in room 228.

Mr. Chairman: The standing committee on resources development will come to order. We have representation from all three parties in the assembly here now, so we shall commence.

We have with us this afternoon the Ontario Trucking Association. I think it has been agreed that the OTA will try to keep its comments to within the half-hour to allow the members an opportunity to have exchanges with association officials for the balance of the half-hour. If there are no other comments, we will proceed right at it.

Mr. Cope, from the Ontario Trucking Association, I would appreciate it if you would introduce your colleagues, and we can get right along with it.

ONTARIO TRUCKING ASSOCIATION

Mr. Cope: As you indicated, my name is Raymond Cope. I am president of the Ontario Trucking Association. I have with me at the table today John Kennedy, to my right. He is vice-president of Glengarry Transport Ltd. of Alexandria and chairman of the board of the Ontario Trucking Association. On my left is David Bradley, assistant general manager, government and public affairs, for the Ontario Trucking Association. On John Kennedy's right is John McKeivitt, president of McKeivitt Trucking Ltd. of Thunder Bay. On his right is Evan Meyers, president of Meyers Transport of Campbellford. On my far left is Pat McGuire, president of Cathcart Freight Lines of Peterborough and Etobicoke.

I would add that there are in the audience a number of other members of the executive committee of the Ontario Trucking Association who have all decided to appear here today because of their interest in the issues that are being examined by the committee. We certainly appreciate the opportunity to appear in the final stages of consideration of the regulatory reform bills as they apply to the trucking industry in Ontario to make our comments.

While there are a number of trucking companies throughout the province that are concerned about different aspects of deregulation and the impact deregulation will have on their companies and on their communities, the industry as a whole is prepared to accept deregulation. It only asks that the new rules be fair and sensible.

As I listened this morning to the minister and Margaret Kelch go over the substance of the two bills, Bill 87 and Bill 88, I felt that the points of acceptability far exceeded the points that remain a matter of concern to us. We appear before you today, however, to look at two points of concern in some kind of depth.

We think there are two major weaknesses in the bill, one that transgresses fairness and one that involves what we believe is a nonsensically futile procedure. These two points are listed on page 2 of our submission, and I will make references to our written submission from time to time.

Our major point of concern, as we point out there, is that out-of-province carriers, including United States carriers, are going to be given easy access to Ontario intraprovincial operating rights. We are

concerned about this, because 40 of the 50 individual US states, including some major market areas close to us, such as Michigan, New York, Illinois and Ohio, will remain regulated. US carriers will be able to compete for markets within Ontario, but Canadian carriers will not have similar rights in the United States. That is not fair; it is not right.

All the industry seeks is a reciprocity clause which would ensure equality of opportunity. Carriers from jurisdictions with easy entry conditions should be given easy access to operating authorities within the province. Carriers that come from other jurisdictions with restrictive entry conditions where it is virtually impossible for a Canadian company to get operating authority should, in our view, be given close scrutiny when they apply for operating authority in Ontario.

Our industry concern over this requirement is very real; it is not a theoretical one. If you turn to page 3 of the brief, you will see six points listed there that represent the summary of the findings an American law firm has put together for us, which deal with the degree of difficulty that a carrier encounters in applying for operating authority within individual states.

Certainly, as is pointed out, the nearby states are the ones that are of most interest to us. Some of them are virtually closed to us. Getting an operating authority in Michigan and Illinois is, I do not say impossible, but extremely difficult, extremely costly, and it can take many years of trying to do that.

We think that when American carriers come into Ontario and compete, as they will because they are efficient—we have efficient carriers too—some of our efficient carriers will be outcompeted by some of theirs. As we lose market authority within Ontario, we feel we should have the equivalent right and opportunity to exploit their markets.

As you can see from the map that is included in our submission, deregulation in the United States has not gone very far. Certainly, there has been deregulation at the federal level, and it is easy, as Margaret Kelch pointed out this morning, to get interstate operating authority within the United States; but only in those states that are portrayed in black is it easy to get an operating authority to operate within the state. One of them is close to Ontario. That is the state of Wisconsin, but as you can see, the other major industrial states that generate a lot of traffic are basically still regulated and virtually closed to us.

The Ministry of Transportation has resisted inclusion of a reciprocity clause in the bill on two basic grounds. One is that it will be unconstitutional, and you have heard the minister and Margaret Kelch point out that the legal view they have is that it would be unconstitutional.

The second point they have made is that when American carriers are permitted to come into Ontario and take on traffic, there will be no jobs lost to Canadian employees and no loss to the economy because of the loss of those jobs, because they will be picked up by the American carrier, who is required to maintain a base of operation in the province.

We disagree with both of those contentions, and I am going to tell you why. First of all, and this can be seen also in the brief that the Ontario Trucking association has put in, the law firm of Gowling and Henderson, which has a good reputation in questions of constitutional law, has examined the

question of the constitutionality of a reciprocity clause and has found that a properly structured reciprocity clause could be incorporated in the new legislation and would be constitutionally valid.

Dealing with the other argument of the Ministry of Transportation, in respect to jobs, it points out that the customs and immigration rules control the fact that Canadian drivers must be used in the delivery of domestic freight, the freight moving between any two points in Ontario. We do not disagree with that, but there are some wrinkles even to that.

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That declaration by the Ministry of Transportation seems to assume that the only jobs in a trucking company are those of drivers. Trucking companies employ a vast array of people in nondriving jobs, certainly in sales, accounting, computer operations, strategic planning, dispatch, law and general administration of a company. All of these jobs are very much exposed. An American carrier, if he were operating across the border and within Ontario, would have the choice of making decisions on where he is going to do his accounting, where he is going to handle his sales from and where he is going to handle a lot of these other jobs. Those jobs are exposed.

We concede that the immigration laws and the customs rules provide some of kind of control on the driving jobs, but even there there are a couple of wrinkles. We contend that it is a heroic assumption to believe that just because there are these laws and rules against utilization of US drivers or handling of Canadian domestic freight it is not taking place. Both countries tolerate, to some degree, positioning moves, and it is certainly our contention that at the present time Canadian authorities do not effectively enforce the immigration laws.

We were encouraged to learn this morning that the Minister of Transportation (Mr. Fulton) is going to be seeking from the customs and immigration departments at the federal level some kind of powers to deal at the provincial highway level with control of these laws. We hope he is successful. It has certainly been our understanding, however, that these departments have been reluctant to allow for joint jurisdiction in the past. We think that even if they do move to allow the government of Ontario and its administrative groups to move into this area, it could take some period of time, and in that period of time a lot of companies can go out of business.

Are American carriers interested in Canada? You betcha. While transborder licence applications by Americans have risen; as a percentage of the total, from 26 to only 29 per cent this past year, the new applications were for province-wide authority versus restricted authority. In the past, licence applications were basically for a route to a new area or to handle a new piece of freight in a given area. Now the applications are, "We want to handle all freight everywhere." That is the typical kind of application coming in, and there have already been, in the area of transborder applications, 1,300 applications filed with the Ministry of Transportation, the Ontario Highway Transport Board this year; 29 per cent of those are from American carriers.

It is certainly our view that after Bill 88 passes and there are opportunities then for American carriers to seek operating authority within Ontario, a lot of them will be positioned to so do.

A number of communities across Ontario have clearly understood the trucking industry's dilemma and have given the Ontario Trucking Association their support. I believe these are shown in one of the maps in the submission. It is true, as the ministry pointed out, that we had written to all of the municipalities across Ontario. Not all of them have responded, but I would say that of those who have responded, the vast majority have supported our position. There were, I think, three received in our office that did not support our particular point of view.

Coming to the issue at hand, it is our belief that the government of Ontario has shown some real concern as to the trade disadvantages for Ontario under free trade, but shown little concern for what we view as the one-sided free trade deal Bill 88 covers, which would hand over operating authorities to US carriers with nothing in return. In respect to the foregoing, the Ontario Trucking Association recommends that this committee and the Legislature give consideration to include our solution to the reciprocity problem, which is incorporating subsections 10(2) and 10(3), which are set out on page 6 of our submission.

These amendments were prepared with the assistance of the law firm of Gowling and Henderson which, I indicated before, had looked into the constitutionality question and were sensitive to what was and was not proper. It has recommended to us that if these particular sections were to be adopted, they would take care of the reciprocity requirement and do so in a way which were constitutionally valid.

Of course, going back, if those were adopted by the Legislature of Ontario, they would, in our view, provide that equality of opportunity between US and Canadian carriers in each other's geographical markets which we think fairness demands.

The second and final point of our submission concerns public interest hearings and actions flowing therefrom. This is dealt with on page 7 of our submission. As can be seen under subsections 10(3) and 10(4) as now written, even when the Ontario Highway Transport Board finds that granting of an operating authority which has been applied for will likely have a significant detrimental affect on the public interest, it cannot deny the issuance of a licence, but can merely restrict it.

My analogy to this is that a murderer goes on trial and the jury finds him guilty, but the only punishment the judge can hand out is to restrict that murderer to the use of handguns as opposed to the use of Uzis. We think this particular section is foolish; it is nonsensical. Why have public hearings by the Ontario Highway Transport Board to go around and hear the views of everybody on whether this is going to be bad or good for Ontario if it concludes it is going to be bad for Ontario but the only thing it can do is issue a licence? It can restrict it. It can say: "Well, all right, this guy is a no-good guy. We are only going to license one truck." That can contain the problem, but it is still foolish. It makes a mockery of sensible transport administration, in our view.

We believe that if the granting of an authority would likely have a significantly detrimental effect on the public interest, and only when it will have a significantly detrimental effect on the public interest, it should not be granted. Surely that makes sense.

To overcome this deficiency, our recommendation is to amend subsections 10(3) and 10(4) as follows: "10(3) Where, after a hearing to conduct a public interest test, the board finds that granting the operating authority applied for will likely have a significant detrimental effect on the public interest in the market proposed to be served, the board shall deny the granting of that authority." We think that has to follow.

"10(4) Upon receiving a report under subsection (2), the registrar shall issue a licence in the terms recommended by the board." Of course, there would be some consequent renumbering if those recommendations were adopted.

Before winding up, I would like to provide comments on a couple of other points that were made this morning on which I guess we have a different view. One was the question of whether economic deregulation will lead to improvements in truck efficiency and whether it will lead to a reduction in empty miles.

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I think the question is not so easily answered as one might think. Certainly, deregulation will provide the opportunity which may not now exist for some carriers to seek to get return loads where they are now moving back empty, but at the same time, deregulation will provide the opportunity for more people to come on the road. One of the things found in the United States with deregulation is that more people did seek operating authorities; more people did come on the road. The traffic level did not change; the same amount of traffic was there, but suddenly they had more trucks on the road. What did that lead to? That means the average load per truck went down and the empty miles went up. That is one thing I envisage could happen in Ontario.

There was some reference to the question of impact on wages. The results in the United States indicated that the truck drivers and unionized employees were suddenly finding it harder to get year-to-year wage adjustments than in times gone by. Certainly, the job situation is difficult to analyze. The number of jobs in the trucking industry today in the United States and Canada is smaller than it was 10 years ago, but part of that is because of other structural changes in society; so it is hard to trace back to what is relevant to deregulation.

It is our feeling that if there is no reciprocity clause, there will not be a net job increase in Ontario; there will be a net job decrease. We cannot be sure how much that may be, but it is going to measure into a few thousand. We have indicated 3,000 in our submission. We think that is probably a realistic estimate.

In any event, I have stayed within the half-hour. I would like now to answer any questions the committee may have. I would like, if a question comes up to which one of our other experts is better positioned to give a straight answer, to turn to one of them.

Mr. Chairman: Thank you. The committee very much appreciates your display of self-discipline on time. It is one from which we will learn and perhaps benefit. We had agreed before we adjourned this morning to share the time among the three caucuses if there is any kind of time squeeze at all.

Mr. Morin-Strom: First, thank you very much, Mr. Cope and the members of the Ontario Trucking Association, for making this presentation

today. Certainly, I think everyone has to be quite concerned when we have legislation coming forward from a government which is being so profoundly opposed on such fundamental issues as we have here today by an association which probably represents those most directly concerned and most intimately involved in understanding this particular industry.

In the lead-in to your position, you state that the OTA will support Bill 88 and deregulation of the intra-Ontario trucking industry if the two changes you recommend are made. Would you support it if these changes are not made?

Mr. Cope: No. I think our position is that we can support Bill 88 with the amendments or similar amendments to those we have proposed. If we do not get them, I would certainly have to go back to our membership, but I do not think they feel the bill as presently constructed is fair.

Mr. Morin-Strom: One of the contentions made by the minister and the assistant deputy minister this morning was that this bill will allow for greater competition in the trucking industry, resulting in lower costs to shippers and consumers. I wonder if you could tell us whether there are routes which have no competition at all today, or does the current regulation in the province ensure there is trucking competition between all destination points in Ontario?

Mr. Cope: Let me ask John McKeivitt to respond to that. John McKeivitt operates in Thunder Bay in the north of Ontario and he can tell you whether he has competition in that particular area now.

Mr. McKeivitt: Yes, I have a lot of competition. All through this deregulation piece, I have been hearing from the minister—that was his main announcement in Thunder Bay when this came out, the first place he stopped—that they were going to give cheaper rates.

I just happened to bring with me a rate schedule I have on file at the board. I find it very disturbing that these rates are filed with the Department of Transport and nobody from the ministry took the time to go and check them. The rate I have in effect for steel products for one customer—and this is just a name shipper, but everybody gets the same rate—has not increased since 1983 to northern Ontario. It is lower than the rate which was charged in 1982.

You may say I was gouging in 1983. To explain that point, I have invested millions of dollars in more efficient equipment. In 1983, we hauled a maximum payload of 70,000 pounds to northern Ontario at that rate. To withstand the competition of poor enforcement on pseudo-leasers who came in once the downturn in the economy started on the up—

Mr. Morin-Strom: Pseudo what?

Mr. McKeivitt: Pseudo-leasers, illegal truckers. We had then to start hauling 80,000-pound and 90,000-pound payloads down the highway, getting multi-axle trailers. Now we run six-axle and eight-axle trailers so we can compete and survive and keep our cash flow going so we can employ people who live in northern Ontario. All our drivers live in northern Ontario with the exception of about eight or 10 we have to have in Toronto.

I find it very disturbing when somebody constantly makes this statement about me. I am a northern Ontario carrier. I have to live in northern Ontario. I employ northern Ontario people. It is not to my benefit to have the rates sky-high. With this attitude, I have won a lot of contracts from southern Ontario carriers who were primarily doing it, by trying to keep it in northern Ontario and give a fair share. We haul more product north. We bring more product back. We have not adjusted the rates upward. We have these here and they are filed with the Department of Transport today. It is very simple to go and find out.

That is how we are trying to survive, but there are more and more players coming into the marketplace. When one disappears, another one appears. How long we are going to be able to survive the way we do business today is a matter of time.

Fifty per cent of our business is into the US. Our major competitor is a US carrier who used to employ Canadians, but in the last year or year and a half he has dispersed all his Canadian drivers and has kept one only in Thunder Bay just to shunt his trailers, because a Canadian driver is no good to him. Now he is reducing the rates where we used to have a compensatory rate to go down, which was always a little better than the rate coming back, because you were at the mercy of the shipper coming back to give you freight. The Canadians got on to this quite quickly. They knew that we were down in the US. We cannot return unless we come back to Canada with a load. So the rates were always a little lower.

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We had that edge, but now with competition, deregulation and more carriers in the field, the Americans come up and take the freight out of here. We have seen reductions of up to 30 per cent on revenue going down in the last year. Then they hopscotch their American driver all over the place, with no deadhead miles or cutting down their deadhead miles to five per cent or six per cent.

I was at a carriers' meeting last week and they are talking about five per cent. If I could get down to 30 per cent, I would be happy because I have to deadhead from somewhere to somewhere else to pick up a load to come to Canada. They hopscotch all over the US and eventually they find a load that brings them back to Canada, but if I am in Dallas, Texas, and I do not have a load coming to Canada, I have to start driving empty to Memphis, Tennessee, to somewhere where there may be a load. That may be 400 or 500 miles.

In fact, we have a haul that we used to operate out of Toronto in a triangular movement into the US and back to Thunder Bay to get our drivers home. Because of the rates out of Toronto, we were to able to do this, and do it economically. Yesterday, with 30 per cent reductions in rates, we had to tell the customer we can no longer give him the service, and we no longer have Canadians doing it. That is what it has come down to. So we are looking at moving 50 per cent of our business to the US and employing US drivers. I may as well be honest about it.

Mr. Morin-Strom: I have one further question related to statements by the minister this morning. The conclusions to the written presentation by the minister state, "With limited competition, innovative services are stifled" under the current legislation. I wonder if you or someone else in the association could tell us about the stifling of innovative services and whether that is the situation in Ontario today.

Mr. Cope: Let me start off on that. I think you would find very few truckers who would say there is a stifling of competition, because wherever they operate in Ontario there is more than one, but to the extent that there is some degree of limitation of competition, is it not going to be possible to overcome that problem by opening up the markets to Canadian entrepreneurs? Why do we have to get American companies to come in and provide that extra degree of competition that people seem to want?

I point out that just last year the federal government decided it was going to deregulate air transportation. It changed all the rules of air transportation to provide for a greater amount of competition, but do you think it went so far as to say, "We're going to allow United Airlines and American Airlines to fly between points in Canada"? No. They said: "It's Canada. We've got Canadian companies. If there are services to be provided, Canadians can do the job." They put a provision in their legislation that for a company to operate in Canada it had to be 75 per cent Canadian owned or controlled. Canadian companies and Canadian entrepreneurs can provide the extra competition that the government, consumers and shippers feel is necessary. You do not have to turn to Americans.

Mr. Wiseman: I appreciate what you said on reciprocity and one thing and another. Some of the shippers or the truckers who have been talking to me seem to be more concerned about playing from a level playing field, and 20 per cent of our truckers will be disadvantaged if American truckers come in here.

Mr. Perkins has told me that it is \$12,000 more on a truck in Canada than it is in the United States. There is no eight per cent sales tax down there. The depreciation is much greater in the United States. State taxes are lower. In fact, some of the state taxes are almost wiped out when you take into account the incentives the federal government gives down there.

I was surprised that was not part of your brief. You were concerned about some of these things. I asked the minister this morning if, where it applies to him, he could talk to ministers in his cabinet, the Treasurer (Mr. R. F. Nixon) or the Minister of Revenue (Mr. Grandmaitre) and vice versa as to what they have done federally to help with the depreciation.

I am a small businessman myself. You can depreciate a thing in four or five years rather than 13 years, as is the case for trucks and trailers in Canada. That is another big disadvantage to our people. Maybe some of the bigger ones that have purchased in the United States, buying their trailers down there, do not have the same problem, but a lot of smaller ones that have to do business here in Canada only will be disadvantaged by quite a high percentage. It gets back to what this gentleman has said, how does he compete if he is at a disadvantage of 20 per cent of the whole right off the bat?

Mr. Cope: Perhaps I can turn to Pat McGuire, who is president of Cathcart currently, but who has been the head man at a number of different trucking companies and has experience on both sides of the border, to comment on some of the points you have raised.

Mr. McGuire: I do not know if it is physically practical to attempt answering all the points you have addressed because of the time limitations, but from a purely sound businessman's approach, I can assure you, having been the chief executive officer of a Canadian-domiciled subsidiary of a US parent, you do not do anything in Canada that you can do in the United States. With today's technology, in terms of communications, linkups and mainframe computers, you do not need the administrative domicile in Canada.

Speaking of equipment, the equipment that can be purchased in the United States, which is equal in its capacity and quality to anything manufactured in Canada, is significantly cheaper. It can be operated in the direction of line haul where it does not violate any of our existing rules or regulations, be it customs or the Internal Revenue Service, in extraprovincial movement and to a certain extent in intraprovincial movement within the province. It is a very simple feat on ongoing transactions between a parent and a subsidiary to take fully depreciated equipment in the United States, which is much more rapidly depreciated, bring it to Canada duty-free, transfer it to Canadian ownership and operate it.

The operating options that you have through the American administration and head office far outweigh those of the Canadian who domiciles himself here as a Canadian citizen without a US affiliation or parent. It is a tremendous disadvantage to operate from.

Mr. Wiseman: Would you agree that the 20 per cent plus disadvantage is a fair figure?

Mr. McGuire: It is probably conservative if you weigh all the factors, particularly to the larger-sized carrier. The average Canadian carrier, particularly a carrier based in this province, is just a local cartage company compared to the top 100 in the United States. Our revenues are minuscule compared to the size and economic clout these carriers can exercise.

Mr. Wiseman: Mr. Cope mentioned that he was pleased that the minister was trying to stop some of the American carriers coming in now from maybe making two or three stops back. They used an example this morning of one coming in from Michigan to Toronto and stopping at Hamilton and a couple of stops on the way back, maybe Windsor, and dropping things off. It has been my understanding from talking to some of the carriers that this is a frequent occurrence.

It is also my understanding that the federal government said it would not deputize the people at the weigh scales to do this. Hopefully they will, but I heard they would not. Is it your feeling within the organization that at the present time there are a lot of US carriers coming into Canada—we all know they can make the one stop, maybe pick up once and drop on the way back—and making multiple stops and cutting out some of our carriers?

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Mr. McGuire: How do you possibly answer the question when no one is attempting to police it today? I can only tell you from personal experience that I happen to know some people who do this with extreme regularity and without disruption.

Mr. Wiseman: That is what I am told by the carriers as well.

Mr. McGuire: From personal exposure, I can tell you it is the truth.

Larger companies that are presenting themselves legitimately in business, and we do have some good foreign-based ownership trying to be good corporate citizens in this country, do not do these things, but they are a minority. If you take the number of vehicles in existing operations that potentially, and do, cross the borders every day that are American-owned and domiciled, they have a broad and extensive use of exempt commodity

transportation in the United States, which creates almost a free agent in terms of what these people do.

I would like to put aside one other thing that has been referred to. If there is any anticipation by Canadians that they are going to experience long-term rate reductions from trucking operations through increased competition, it is a fallacy. The competition that exists in Ontario trucking in particular, which has been developed through the broad and extensive grants of intraprovincial authority since 1980 in this province, has created a competitive environment to the delight of our users, so much so that many companies are on the verge of financial difficulty today.

There is a reason for this disparity of opinion. Up until 1980—and since 1935 in the United States under part II of the Interstate Commerce Act—total economic regulation existed over international transportation as well as extraprovincial or interstate transportation.

The rates did become distorted; there is no question about it. As soon as the US removed its laws, Canadians went to work, for the most part as residents in Ontario where their rates had been controlled by the Interstate Commerce Commission for 45 years, and brought rates down through increased market share and better penetration of existing efficiencies that could be produced in balancing operations.

We have never had economic rate regulation in this province in trucking. I think those who are expecting economic gain through deregulation of trucking are in for a surprise.

Mr. Wiseman: When I talk to some of the shippers, they say you are afraid of competition. I have said I do not think you are afraid of the competition, but you want a fair playing field to play on and not a lot of disadvantages in this kind of climate. Is that true? I know my colleague asked you if you would be in favour if you do not get your reciprocity and the other two amendments you want, but you are not afraid of competition, are you?

Mr. McGuire: If I were afraid of competition, I would not be in this business.

Mr. Wiseman: That is what I gathered.

Mr. McGuigan: My question is to Mr. Cope. The minister told us that in the matter of reciprocity, it is as easy for a Canadian company to get an operating licence in those restricted states as it is for an American, and in that sense we have reciprocity, which I can accept. But I think your statement earlier today was that this is not true, that it is very hard for a Canadian company, or almost impossible or it takes a great deal of time for a Canadian company to get that authority in a US state. Would you clarify that for us?

Mr. Cope: Certainly. The rules that apply in the individual states are difficult for American carriers as well as difficult for Canadian carriers. There is no doubt they both have to go through the same set of hoops.

Mr. McGuigan: Are they equally different?

Mr. Cope: I have no basis for believing that the American carriers have any particular advantage in getting licences in those particular states

over Canadian carriers. I think the rules are the rules and they are probably fairly applied.

Mr. McGuigan: I did not get that understanding from your earlier statement and I thank you for that clarification.

Mr. McGuinty: In your relationship with other provincial trucking associations, the Canadian Trucking Association or the American association, have any of these organizations, to the best of your knowledge, made similar motions regarding reciprocity of the kind to which you allude? Have other states or provinces considered reciprocal clauses in their legislation?

Mr. Cope: I do not think they have formally. Certainly, from time to time, the provinces of Alberta and Saskatchewan have pointed out in their representations to their ministers that if this other province, say Ontario, does this, then we had better do that. So they have been thinking in terms that things should be reciprocal. For example, Alberta truckers and the Alberta Trucking Association become concerned that it is easy to get a licence in Alberta, and they say, "If it is easy to get a licence in Alberta, why shouldn't Alberta truckers find it easier to get a licence in Ontario?"

They have made representations of that kind to their minister, although they have not suggested any legislation to deal with it. Similarly, in Saskatchewan thoughts have crossed their minds that what is fair is fair, and they have been concerned about a level playing field.

Vis-à-vis the American Trucking Association, in its representations to Congress it has always put the notion that what it wanted in Canada was opportunities to get licences to and from Canada. They felt they had that coming because they had deregulated at the federal level in 1980. For a long time, that was a sore point with American truckers. Of course, they have now got that at the federal level in Canada. The ATA took no particular position on wanting to see deregulation within provinces in Canada. They stood back from that. But if the provinces in Canada deregulated to make it easier for their carriers, they would say that has to be good.

There is just one other point I would like to make, lest there be any misunderstanding. The Ontario Trucking Association is not opposed to American carriers. Indeed, we have American carriers as part of our organization, including two of the biggest companies in the United States. Canadian Freightways has been a Canadian subsidiary of Consolidated Freightways and has operated in Canada responsibly for a great many years. We accept that as a good way to proceed. Roadway Express Ltd., which we put through a lot of hoops to get operating in Ontario, is now in the province. It is a member of the Ontario Trucking Association and is part of our submission. St. Johnsbury Trucking is another big American organization that is part of the Ontario Trucking Association.

We are not opposed to American truckers per se. We are concerned with the way in which operating authority may become available to a lot of newcomer American companies when Canadians have the difficulties we have expressed in the United States.

Mr. Pouliot: I have a few brief questions. The rationale behind the government's intent to proceed with Bill 88 is that it will become more competitive. How many members are there in your organization?

Mr. Cope: The Ontario Trucking Association has a membership of 900, of which 600 are in the for-hire category.

Mr. Pouliot: Do you feel you are in a highly competitive or somewhat competitive field?

Mr. Cope: I think my trucking company members would say they are in a highly competitive field.

Mr. Pouliot: I am seeking clarification. I am relatively new at this and I would like you to help me with your expertise, Mr. Cope, simply by virtue of the fact that the statement we received from the government this morning was, to say the least, flawed when compared with your submission. You are the expert in the field who makes a living at it.

On page 5 of your submission, you say: "It is also interesting to note that in 1987, 125 extraprovincial (into Ontario) licences were granted to US carriers who had never been licensed in Ontario before, while only 56 new class X licences for operators from Ontario into the US were granted to Ontario carriers." That is 125 versus 56.

Assuming that we are moving the same goods, because the load is not surpassed or exceeded, how is that going to create jobs?

Mr. Cope: Of course, we are getting into areas right now that are a little out of the purview of this particular consideration and deal with the federal legislation and transport or operating authorities. One thing which probably would be said by government is that the United States has been open to Canadian carriers to operate from Canada to points in the United States since 1980, and that the Canadian carriers with a high degree of interest in that made their applications into the United States several years ago, whereas the American carriers have only recently had the opportunity to apply on a large-scale basis in Ontario. That helps to explain some of the numbers.

But you are right. It is certainly our view that as more American carriers take up positions to and from Canada or within Canada, it has an adverse effect on Canadian jobs.

Mr. Pouliot: Oh, I see. It is pretty well in line with what the government is saying, and I am quoting from its paper this morning: It would enhance the "ability to obtain spot backhauls, service to new developments," and the last and formidable contribution from our beloved government, "rail-line abandonments." I guess that is one sort of novelty in terms of introducing job creation.

Mr. Sterling: I understand from this morning that the minister and your particular organization have different legal opinions as to the possibility of introducing a reciprocal clause into section 10 of Bill 88. I would like to get clarification from the minister and from the trucking association on the intent of your proposed new subsection 10(3), whereby you would give the board the right of denial of licence after the public hearing.

I ask the minister first whether he sees that as a breach of the basic philosophy enshrined in Bill 88, in that, as I understand Bill 88, the right of denial is not there, that the right to deny somebody has to be basically on safety grounds.

Hon. Mr. Fulton: I do not think it does gut our bill, which was the

previous question you were asking, but it certainly impedes the whole transition period, the five-year public interest test which was at the Ontario Trucking Association's request. It does not give us that transition period, but it is certainly not going to defeat the bill.

Mr. Sterling: With regard to their position in subsection 10(2), you have objection to their particular proposal on legal, technical grounds?

Hon. Mr. Fulton: On the basis of reciprocity?

Mr. Sterling: Yes.

Hon. Mr. Fulton: First, I was pleased to hear the response to Mr. McGuigan's question by Mr. Cope that in fact Americans and Canadians are treated equally. That was the point we were making this morning. There is a constitutional question that we could argue until all the lawyers in this country have been heard, but there is also a philosophical one: in adopting the rules of the game, it should be the rules of entry we would like to see and apply here in Ontario, and any other jurisdiction has that power to do so.

Mr. Sterling: Are you saying that given there are differing legal opinions on it, therefore there is some basis to include that kind of power in the act in that there is argument, at least, on both sides, and that when you are dealing with the Constitution, when you are dealing with that greater document, notwithstanding there may be an argument constitutionally as there is on just about every law we make—are you rejecting it on the basis of philosophical grounds or on the basis of legal grounds?

Hon. Mr. Fulton: I think, Mr. Sterling, it is really on both cases. Legally, our advice from our lawyers is that it is not constitutional. On the other side, philosophically, we believe this is the proper way for Ontario to go. We have discussed this over and over with all parties interested in this issue.

Mr. Bradley: If it so suits the committee, we would be pleased to arrange to have our lawyer from Gowling and Henderson appear before the committee to answer any specific questions with respect to the constitutionality of this proposed revision. They are very firm that the opinion of the Attorney General's office is flawed and that we can have a constitutionally valid reciprocity provision. None of us here can respond to that adequately enough, but if it is an important enough issue for the committee, we could arrange to have that person appear before you.

Mr. Chairman: Perhaps it would be helpful to the committee, particularly for those people who have minds of a legal bent, to have it forwarded to us in writing at least.

Mr. Polsinelli: It is in the presentation.

Mr. Bradley: It is enclosed in appendix A.

Miss Roberts: It is here already in sufficient terms.

Mr. Chairman: We could look at that.

Mr. Wiseman: It would be nice to have him explain it to us.

Miss Roberts: It is very straightforward.

Mr. Chairman: If, when we have been through our public hearings the committee feels it wants that to happen, we will give you a call.

Mr. Bradley: Sure.

Mr. Chairman: If there are no other questions, I would like to thank you very much.

Miss Roberts: I would like to ask one question, if I might put it to Mr. Cope. What you are asking us to do with the reciprocity is to give special consideration to states in the United States that will let you in more easily.

Mr. Cope: That is right.

Miss Roberts: I just want to make sure. You are asking us to give special consideration to certain states and only to those states.

Mr. Cope: That is right. Put the states with fast-track legislation on the fast-track in Ontario.

Miss Roberts: OK. So you are asking us not to treat them—

Mr. Cope: I guess we are asking to treat them fairly.

Mr. Chairman: Mr. Cope, we thank you and your colleagues for coming this afternoon. We appreciate your taking the time.

Mr. Cope: Thank you very much.

Mr. Chairman: Our next presentation is from the Retail Council of Canada and I see a familiar face making its way to the table. Mr. McKichan, welcome to the committee again. Please introduce your colleagues and move right into it. The copy of the brief of the Retail Council of Canada has been distributed to members.

RETAIL COUNCIL OF CANADA

Mr. McKichan: My name is Alasdair McKichan and I am president of the Retail Council of Canada. Appearing with me today on my immediate left is Lanny Kaine, who is the distribution services manager of Eaton's. On my immediate right is Peter Woolford, who is the vice-president of the Retail Council of Canada. On Mr. Woolford's right is Raymond Mikesch, who is senior vice-president of distribution services for Central Canada Grocers..

I might just mention, because of its interest to the committee, that Mr. Mikesch in the course of his career has worked for a subsidiary company for Loblaw Companies Ltd. in the United States and so brings with him some US experience, including the experience of going through the deregulation period in interprovincial trucking in the United States.

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We will attempt to briefly condense our submission. My presentation will be short because our message in essence is simple. We are supportive of the bills and with only minor amendments we recommend their swift passage.

Perhaps I will take a moment to describe our organization. We represent virtually all facets of the retail industry. We have in our membership retailers who do over 65 per cent of the total retail volume in the province. Our industry is probably the heaviest user of road transportation in that somewhere between 75 per cent and 85 per cent of the merchandise sold by the industry moves by truck.

We strongly support the bills, as I mentioned. We urge their passage. We feel there is indeed a price for inaction in that failure to move at an appropriate time could mean that Ontario producers would be disadvantaged by higher transportation costs relative to producers in other provinces and in the United States.

Concerns have been raised about the impact of greater competition in relation to shifts in industry, structure and ownership. I know the committee has heard some concerns on that. There are the problems of interim adjustment to the new regime, the question of safety and, as was discussed at some length in the last presentation, the question of reciprocity with other jurisdictions. Let me touch on each of these issues.

So far as structure is concerned, we acknowledge that there will be some market shifts with a move to a more competitive marketplace. We believe, however, that the main beneficiaries will be our carriers who will provide better, more competitive services than private carriage can offer and at rates which become more attractive than the actual costs of private carriage now are.

We do not believe that foreign carriers represent a major threat to the Ontario industry. As the barriers have come down, US truckers have not gained a significant market share in interprovincial trucking.

On the question of adjustments, I would emphasize that we are strongly opposed to the five-year transition periods with their reverse-onus public interest tests. We believe the criterion of fitness only should be implemented much faster so that the benefits of the new system can be enjoyed sooner. In fact, we have something of a preview of that in relation to the federal scene where, because of a similar provision, we are not yet enjoying significant advantages from the federal moves.

We feel that the long gestation period for this legislation has indeed allowed firms ample time to consider whatever adjustments that may be necessary. We understand that much of the new regime is actually being followed in practice right now.

As far as safety is concerned, retailers are as concerned as any other shipper and trucker about safety. Good maintenance and safe operating practices are necessary to ensure reliable, on-time deliveries. This provides a natural self-discipline in favour of safety-related practices, at least as far as well-managed competitive companies are concerned.

The unfortunate incidents of which we hear from time to time will probably always occur just because there are people who are not as diligent or responsible as they should be. But we strongly support the development of safety standards and the national safety code.

On the question of reciprocity, we do not really believe that the pursuit of reciprocity with other provinces and states which do not have exactly the same fit, willing and able criterion should be used to slow down implementation of the new regime in Ontario. We note that in any event the

"provincial interest" clause, 10(3)(b), does provide leeway for consideration of reciprocity should it prove to be a serious issue. Possibly regulations could be used to provide guidance to the Ontario Highway Transport Board in relation to the application of that clause.

Believing in the merits of competition, we would argue that the denial of a licence or restrictions on it because of a lack of reciprocity should be undertaken only in really exceptional cases, where there seems a very flagrant discrimination against Ontario trucking firms.

In conclusion, we believe the bills are in the public interest and in the interest of shippers and the transportation industry and we recommend their passage as soon as possible. We will be happy to respond to the committee's questions.

Mr. Wiseman: I wonder if it would be possible to get a brief statement from the gentleman you said was familiar with what happened south of the border, where they had a few more incentives when they went into deregulation—what it cost per hundredweight compared to what it does here, what the time scale was of getting a shipment to and from its destination, how that improved. We heard this morning that it would be quite a bit cheaper here and times would be speeded up and this sort of thing. I would like to hear from you as a retailer.

Mr. Mikesch: From a retailer's perspective, the one most significant advantage that came out of deregulation was the influx of the number of carriers into the market, where in the old scenario of regulation the number of carriers was significantly restricted. With the advent of deregulation back in 1980, the number of carriers increased rather dramatically. That provided for competitive reductions in rates and obviously improved service. Those of us in the industry had an opportunity to choose from a greater number of carriers and obviously selected those that provided us the best service at the best price. As far as statistics associated with actual reductions in rates and improvements in service are concerned, that is a very difficult question to answer. I can say only that from a retailer's perspective, from the perspective of those of us in the retail grocery industry, there was significant advantage associated with it.

Mr. Wiseman: It was Loblaw, was it, one of those firms?

Mr. Mikesch: I was associated with a firm called National Tea Co., which is a subsidiary of the Loblaw parent.

Mr. Wiseman: Would you be able to put a figure on it of a 10 per cent saving or a 20 per cent saving and give us a little better idea? Did you get your shipments quite a bit faster overnight?

Mr. Mikesch: It is very difficult to be pinned down to an actual percentage of increase, because it was an evolutionary type thing rather than this way one day and that way the next.

Mr. Wiseman: As a small businessman, I try to find out how much it has cost me on a yearly basis, and I do that with three stores. I am sure a big chain, with all the computers and everything it has, must know if it was a 10 per cent saving when it was deregulated.

Mr. Mikesch: For the sake of our specific operation within the industry, we were looking at an eight per cent reduction in transportation

cost as it dealt with our particular operation. But understand, we were one small segment of the grocery industry in the midwest, unique and unto ourselves. One could not generalize on that eight per cent reduction overall. But that is what we happened to experience from one period of time prior to the point where we looked at it afterwards.

Mr. Wiseman: Did you reduce your time? Lots of carriers are now giving 24-hour service. How would you ever reduce that to less than 24 hours.

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Mr. Mikesch: It was a matter of responsiveness on the part of the carrier. In our industry, where we are so concerned about the advertised items being available for the consumer at a specific time during the day for receipt, we were in an hourly appointment schedule business where we needed the particular goods at a particular point in time, not so much the day but the hour. We chose only those carriers, and there obviously were those who came up to us, who were able to provide that service.

Mr. Wiseman: And that has improved?

Mr. Mikesch: Yes, sir, it did.

Mr. Pouliot: I have an interesting impasse or dilemma. You speak at some length on pages 6 and 7 regarding the fit, willing and able criteria. You talk about safety and say that satisfying the customer's need becomes perhaps your best incentive to make sure you can deliver on time, for instance, from great distances, and therefore the carrier would benefit from having good equipment in order, which is certainly a natural reaction.

Then you go on on page 7, and I am asking how you reconcile the fact that—and I am quoting from your statement—you "support the development of a uniform national safety code for trucking so that current levels of safety can be enhanced. We are concerned that the proposed CVOR requirements may prove to be excessive and contribute to the creation of an extra layer of" bureaucracy. I take it that you are not advocating a national safety code, because its criteria would be less than what is proposed at the provincial level?

Mr. McKichan: No, we are simply suggesting it for reasons of efficiency and the avoidance of bureaucracy. If you can achieve the same quality of results with a simpler form of standard and organization, we would applaud that.

Mr. Pouliot: OK, thank you.

Mr. Wiseman: Can I go back to the eight per cent again and just ask something as a retailer and a consumer too? I do not want to pin you down to this firm you used to work for, but did you find generally in the grocery business that, with an eight per cent saving in pre-cost, the consumer benefited by that eight per cent, or perhaps even a little bit more than eight per cent, on the goods that he or she bought? Or was that a saving to the company that went to the shareholders?

Mr. Mikesch: I believe the nature of our business is such, sir, and competitive situations being as they are, that the eight per cent we achieved—and not in the cost of goods but in transportation of that cost of

goods; it is just a small segment of the total cost of goods—was something that automatically went back to the consumer whom we supply.

Mr. McKichan: I think it is also realistic to expect that in a deregulated environment some, perhaps many, existing private fleets would be turned over to a public carrier business because they are justifiable at the moment only because of the rate situation and, to some degree, because of the control, but it is mostly an economic situation. I think the likelihood is that the public sector of the haulage business will be substantially increased and the private sector will be diminished.

Mr. Wiseman: But is it not fair, as representatives of the retailers—and you are in favour of these bills—that you would not want to see something come through that would hurt the trucking industry as we know it today?

Mr. McKichan: No, we want to see a viable, strong, competitive—

Mr. Wiseman: Stronger rather than weaker.

Mr. McKichan: Yes, and we would not be supporting the bills if we did not think that the strength could be maintained.

Mr. Wiseman: Even with some of the disadvantages that the truckers have told us they are facing?

Mr. McKichan: We would assume that, as in any deregulation situation, there would be an introductory period where there would be some disturbance, and that, I think, has happened in almost every deregulation situation. But then after that settles down, we would expect that the advantages would be both to the industry and to the customers of the industry.

Miss Roberts: Finally, briefly, you have indicated that you do not want that five-year phase-in period. We have heard this morning that it is to help get over some of the tough times for the carriers themselves. Can you give me some explanation as to why you expect there will not be tough times? I am not a trucker by nature. Can you just give me some background as to why you feel it could be a shorter period, or maybe we should wipe that period out completely?

Mr. Kaine: If I could address that issue, first of all, as you know, changes in legislation have been under discussion among the carriers for a good number of years.

Miss Roberts: Has the industry responded well?

Mr. Kaine: Some of them have positioned themselves with anticipation of changes in a more competitive environment. Certainly, many of them have provided connections with other areas of business where they can achieve efficiencies.

We believe that period of time, together with the entrance of carriers that have already appeared in Ontario over the years, is sufficient to protect the industry. We do see some relocation in the short term.

Miss Roberts: Can you explain relocation?

Mr. Kaine: Relocation is everybody's business. It is competitive

business. If we put stores in the wrong place, then there is going to be some relocation at some point. But we do not expect that relocation to be as significant as some people would perceive.

Miss Roberts: It is my understanding that the bill sets up a committee, with members of the public or people interested in this particular industry, to review this public interest test, as I would call it. Is that satisfactory to you? You just do not want it to be for the five-year period.

Mr. McKichan: Our position is, basically, we have now had a little experience with the federal situation and we have been disappointed with that provision in place. There has been relatively little changed.

Mr. Mikesch: It was our opinion when the original proposal was made for the five-year testing period, that there would not be the opportunity for preparation as has already occurred. It is our position that the opportunity for transition is already in place. Why add another five years on top of that?

Miss Roberts: How are we harming your business if we put this off? Is it costing you more?

Mr. Mikesch: We believe the consumer is paying more than perhaps she has to, if these opportunities were available to her now as opposed to five years from now.

Mr. McKichan: Just commenting on a previous question that Mr. Wiseman asked, I think the history of the industry has been—and I am sure Mr. Wiseman would be aware—that in any new, significant, innovative development or technical development, the company which introduces it first gets a slight advantage, or may get a considerable advantage, but it is only a matter of time, and usually a very short time, before the competitors catch up and then that benefit is distributed back to the consumers in prices. That has been the history of the retail trade for as long as anyone can remember.

Mr. Morin-Strom: I would like to get at the essence of your reasons for supporting this bill for the deregulation of the trucking industry. I guess that would be under general comments on page 4, where you say, "The current system of regulating trucking is outmoded and protects inefficiency, thereby placing costs and competitiveness disadvantages on Ontario retailers."

Do you have any studies or evidence which could tell us what the inefficiencies are and what the cost implications are in the current system, in comparison with what you see is happening under this new legislation?

Mr. McKichan: I think probably the most vivid example of the fact that there is a situation which is improvable is the fact that numerous retailers see fit to run their own transportation fleets. They are not in the transportation business. That is not where they want to focus the attention of their management or the allocation of their capital. They would be much happier devoting these moneys to selling merchandise, operating stores and promoting merchandise to the customers.

1520

The reason they get into the transportation business is that they feel that because of the existing market situation, even they, as nonspecialists, as it were—not detracting from the abilities of my colleagues, but the corporation in itself is not a specialist in transportation. Yet it sees fit

to operate these types of branch of the business when it really feels it should not be in that business. As I said, I would suspect that one of the immediate results of this legislation will be to see people who are not really transportation specialists getting out of the transportation business.

Mr. Morin-Strom: How much is that going to save the retail industry?

Mr. McKichan: It will save the retail industry only in transit. The savings will, as I mentioned, be funnelled through to the consumer and thereby improve the provincial efficiency of the whole province and its international competitiveness. You heard a figure of eight per cent in St. Louis. I imagine there would be figures of that magnitude in Ontario.

Mr. Morin-Strom: So you think the cost of trucking will be reduced by perhaps eight per cent.

Mr. McKichan: Do not hold me to that, but it seems to me that it is not unreasonable to expect figures—

Mr. Mikesch: Perhaps I might help out with that. The reason for quoting eight per cent was precisely as just described. Where I operated an in-house private carriage fleet in the US for the purpose of hauling goods from the supplier's plant to the depots for furtherance and then to the retail store, the difference between the cost of operations before and after deregulation was a net savings in that arena of eight per cent. That is a hard, fast number that in my particular business segment I was able to quantify. I eliminated that private carriage segment of my business for the sake of allowing public for-hire carriers to take over that responsibility at a net reduction of eight per cent in that transportation expense.

Mr. Kaine: If I could add something to that as well, a lot of that reduction depends upon the lane of traffic being talked about. If you are looking at a traffic lane, say between Toronto and Montreal, that is already very competitive, with many not only private fleets but common carriers running that route, the addition of carriers on that lane will not result in a hugely significant drop in rates. Meanwhile, other areas could be much more significant than what was experienced by Mr. Mikesch.

Mr. Morin-Strom: I guess the issue is, are the rates, in your view, too high because the current trucking industry has exclusive rights to routes and this allows them to essentially gouge their customers and make excessive profits, or are they too high because they are paying union wages where they could be paying much lower wages by allowing entrance to firms, as happened in the United States, which are contracting out the work at much lower wages? Where exactly is it that this saving, which may be eight per cent, is going to come from in terms of the cost of trucking?

Mr. Mikesch: In my opinion, because of the competitive nature existing carriers will be forced to consider as a result of freer entry of additional carriers, this will create the efficiencies that will bring about the savings. Specifically, whether it is in wages, in the method of loading or in the method of any of their existing procedures is difficult to quantify. It is probably a mixture of a number of those areas. When put into a competitive circumstance, one finds oneself exploring avenues of opportunity which perhaps would be overlooked in the absence of that pressure, in the absence of that competitive consideration.

Mr. Kaine: Maybe I can offer a couple of suggestions there. One of

the ones the OTA discussed at length before us was empty miles. If the current restrictions on licences and so on are removed, then that provides opportunities for the existing carriers to solicit freight on lanes where they may at the present time be running empty. Again, in a competitive environment, they will end up, just as we do, having to pass those on to us as the consumer of that service.

Mr. Morin-Strom: One final question in terms of the specific cost for transportation of goods: do you have any figures which would show what the average cost per ton-mile, I suppose, or some kind of equivalent unit, would be for your industry in Canada in comparison with the cost of transporting goods in your industry per ton-mile or the equivalent unit in the United States?

Mr. Kaine: I do not have anything like that and I am not totally sure I would see the relevance of it for my business, because again, I do not operate in the United States, so I would not see the usefulness of that information. We are talking different fuel requirements, different insurance requirements—many, many different things.

Mr. McKichan: I think also the differences in geography between the two countries make any comparison really not very helpful, in the sense that the United States is a much more efficient country in terms of distribution because of the concentration of its population and because of the efficiencies that can engender, but I am sure Mr. Mikesch could speak to that because of his experience.

Mr. Mikesch: Even in my own operation, where I operate in Metro Toronto as well as in the Cochrane-Sudbury area, my expense in Metro Toronto is in excess of \$1.70 per kilometre whereas in the Sudbury-Cochrane area it is less than \$1 per kilometre, but the difference is that my hauls here are much more tightly compact and considerably fewer miles, whereas in the north, obviously, the distance between stops and the significantly increased number of miles brings the average cost per mile down. But one would never assume that it is more efficient to ship in the Sudbury-Cochrane area than it is in Toronto. It is just that the statistics, when compared, end up being irrelevant.

Mr. Morin-Strom: The point is that you have made the argument in here that you have a competitiveness problem and that in fact Ontario, outside of the trucking field, in the manufacturing and the service industries may have a competitiveness problem, because of the cost of transportation in Ontario, with products coming into Ontario. It seems to me that if we are paying a transportation penalty, that is very relevant to your competitiveness argument, but apparently you do not have any information or projections as to what that cost penalty is.

Mr. McKichan: I think it would be difficult to quantify it and get a meaningful figure that you could use for the purpose you intend. I do not think it would prove anything on that basis.

Mr. Sterling: Thank you very much for presenting your brief to the committee. I notice that you say on page 3 on your background that transportation costs are a major element in terms of consumer goods. Is there any estimation of the percentage of the total price that represents?

Mr. McKichan: We were just discussing this before we appeared. Mr. Kaine, do you want to take that?

Mr. Kaine: The problem you have in measuring it in that way is that there is such a variance in goods, yet at the same time, generally freight rates are the same. If you have a refrigerator that retails for \$600 and another refrigerator that retails for \$1,200, the transportation cost is basically the same, because it is a weight-related or a cube-related tariff. When you term that as a percentage of the retail cost, there is quite a variance in that.

In general, the percentage we would talk about in general merchandise, like on my side of the business, compared to what Mr. Mikesch would talk about in the grocery business, would be significantly different. Even within department store business, it would be very different by commodity.

1530

Mr. Mikesch: But overall in the department store business—

Mr. Kaine: In the department trade, it would run a little less than two per cent if you are talking about inbound transportation.

Mr. Sterling: I imagine the grocery business would be much higher than that.

Mr. Mikesch: If I could just quote statistics that may have some meaning for you, in the case of the dry grocery side of our business, the can of beans, the box of toilet tissue, it would be made up in the neighbourhood of five per cent of transportation expense, both into our facilities plus our furtherance to the retail store. When one gets into the perishable side of the business, a head of lettuce, for example, may have as much as 15 to 20 per cent of its total value made up of transportation costs. As Mr. Kaine was saying, there is a variance of considerations that come together. You have to try to generate one specific assumption.

Mr. McKichan: Of course, if you are including internationally originating merchandise in the department store sector, it would not be two per cent; it would be more like 10 or 15 per cent in terms of overseas trade.

Mr. Sterling: You had the opportunity to hear the OTA make its presentation. They have put forward two proposed amendments. I do not know if you had an opportunity to look at them. I would assume you would have some concern with subsection 10(3). Do you have any opposition to the proposal with regard to reciprocity?

Mr. McKichan: Leaving aside the constitutional question, which I know exists, our feeling was that is probably a little too hard and fast. We would hope that if there are problems, they could be dealt with more on an administrative basis of discussion rather than building it into the legislation. We would not like to send up a signal that virtually we are going to be hard and fast because we can conceive of Ontario truckers possibly looking to intrastate business in the United States, but we do not envisage a great many Ontario truckers looking, for instance, at doing intrastate trucking in Arkansas or Missouri or somewhere like that. It seems to us it may be too hard a signal to be sending out.

Mr. Chairman: If there are no other questions, Mr. McKichan, thank you very much for your appearance before the committee this afternoon.

I would like to thank committee members for not asking Mr. McKichan his views on Sunday shopping.

Interjection.

Mr. McKichan: I would be happy to respond on free trade.

Mr. Chairman: I understand the representatives from the Board of Trade of Metropolitan Toronto are here and are willing to come on a little earlier. We appreciate that.

Welcome to the committee. I trust you will introduce your colleagues to us.

BOARD OF TRADE OF METROPOLITAN TORONTO

Mr. Ramm: Good afternoon. our fourth attendee has been detained. My name is Gordon Ramm. I am chairman of the distribution and customs committee of the Board of Trade of Metropolitan Toronto and also director of distribution for Weston Bakeries Ltd., Toronto. Joining me this afternoon are B. L. Bud Maheu, of the board of trade's staff, on my left, and David Gillelan, corporate traffic manager of Albright and Wilson Americas, a past chairman of our committee and also chairman of the board's special subcommittee which reviewed the Truck Transportation Act.

1530

Our brief submission has been circulated to you, and in the interest of time, I do not propose to read it fully this afternoon. I do have a couple of prepared opening comments.

The board's nearly 16,000 members have major financial and social commitments to the economic development of all parts of Ontario. Our membership is diverse, comprising large and small industries, manufacturers, wholesalers, retailers and carriers, not only truckers but railways, airlines and steamship operators, service industries, etc.—in other words, all of those who are directly involved with the shipping, delivery and receiving of goods throughout Ontario. We have those who operate their own fleets and those who use common carriers.

We are here today because we support the legislation and we want to see it progress as quickly as possible. The proposed legislation remains virtually unchanged from that introduced on at least two earlier occasions, and we see no reason to delay implementation any further.

We would now draw your attention to our comments on the support for a fitness test, as outlined in appendix B of our brief. We recommend that such a test be reasonable and not unduly restrictive, particularly for small applicants who are fit, willing and able to enter the trucking business and who can demonstrate adequate financial and operational capabilities. We have a good transportation system in Ontario now, and Bill 88 will lead to improving the system.

We also refer you to our comments on reciprocal licensing. As indicated, this issue is not dealt with in Bill 88, but as we have commented on

reciprocity in the past, we feel our views bear repeating. We support the concept that all carriers originating in other jurisdictions and granted licences to operate in Ontario should do so under the same conditions as Ontario-based carriers, that is, that they be required to meet Ontario rules and regulations in such areas as fitness, safety, insurance coverage, etc. We would ask the committee to consider these views when making its deliberations. However, we would urge that this issue not result in any further delays to the legislation.

The proposed legislation to reform truck transportation in Ontario will open up the trucking industry, which will result in increased competition and produce savings for the consumer. Bill 88 is good legislation and it is good for the people of Ontario. To repeat ourselves, let us get on with early enactment and implementation.

As an adjunct, in relation to the questions asked by the committee of the previous witnesses, particularly the Retail Council of Canada, I would like to quote from a bulletin we received from the National-American Wholesale Grocers' Association, a statement by John R. Block, their president, who is a former US Secretary of Transportation.

"Historical experience since the 1980 Motor Carriers Act enactment bears out this belief. The savings derived already from lower transportation costs have contributed to a very low inflation rate for food prices. Many companies in our industry have transportation operations which now operate as profit centres, largely by utilizing the opportunities made available by the 1980 Motor Carriers Act."

With that, we will now be pleased to answer any questions from the committee.

Mr. Morin-Strom: In terms of the two amendments which were presented this morning by the Ontario Trucking Association, I take it that you would support their amendment on the reciprocity clause but not their amendment on the public interest clause. Is that your position?

Mr. Ramm: That is correct.

Mr. Morin-Strom: Second, one thing that disturbs me in your presentation is number 3. You state, "The board is strongly opposed to any legislation which limits the number of vehicles that may be licensed by any one carrier for any reason except financial inadequacy."

I do not know how you cannot want to have any kind of restriction on the basis of a firm's safety record. Are you saying you can have unlimited safety violations? We heard earlier today that 20 per cent of the truckers in the province are operating illegally—that obviously is not financial inadequacy—but your position is still that you would not want to see any restrictions on carriers when it is in the interest of public safety.

1540

Mr. Ramm: Our inference relates to new applications in that we do not think a company applying for a trucking licence should be restricted in terms of the number of vehicles it is able to operate except if it is deemed it is financially inadequate. Subsequent to having its licence, I would

suggest it would then be subject to the rules and regulations vis-à-vis safety, insurance, etc. Our comment relates here to new applications.

Mr. Morin-Strom: OK. That was not as clear the way you had put it on paper here.

Mr. Wiseman: There is something I should perhaps have asked the other group but maybe you can answer it for me. Lots of times as a receiver of goods we run into damaged goods. If we get an influx of American carriers or even now the way it is—the way they can make one drop in Canada, pick up and make a drop on the way home—are your members finding it difficult to get those claims honoured? It is bad enough with some of the carriers now. If you are dealing hundreds of miles down in the US with them, what has your members' experience been on that? Has it been good? Do you recommend that they maybe have insurance here in Canada so you can deal here rather than south of the border with them? It seems you wait for ever sometimes with some of the carriers from what I hear.

Mr. Maheu: I have no recollection of having heard of specific complaints from our members about claims for loss or damage. In answer to your question, I think that under deregulation or regulation the onus is on the receiver or the shipper to select carefully the carrier he employs. No matter what legislation we have, we are going to have irresponsible or careless carriers; the businessman must behave like a businessman and select his carriers as he selects his merchandise.

Mr. Wiseman: Even with the best bill, at times something is going to happen. All I am saying is that it is hard enough as a small retailer to get your claims paid here. I wondered why someone has not addressed that, that perhaps they have to be licensed or have someone up here to look at the claim and to make payment for the claim rather than be 500 miles or so away in the US. What is the fellow I am looking for? An adjuster. They must have a Canadian adjuster to make the settlement. Sometimes, if it is not too big, you just forget about it and go away and lick your wounds, but with some items—the gentleman who was here before mentioned fridges or stoves or something—you just cannot do it. They are too big an item to write off. I just wondered. That is something that maybe should be covered.

Miss Roberts: Gentlemen, thank you very much for your presentation and for its brevity. What I would like to do is look at your concern with reciprocity and reciprocal licensing. I just want to be sure I am following your reasoning right. What you want to have happen, it would appear, is that you would like all jurisdictions to move towards a more compatible carrier system. Is that correct?

Mr. Ramm: That is correct.

Miss Roberts: By that, you mean all provincial as well as moving into the US for more compatibility?

Mr. Ramm: Yes.

Miss Roberts: Do you feel that if we put in our particular act something saying, as has been suggested by the Ontario Trucking Association, "We are not even going to let you come and talk to us unless you do something." Do you think that is going to be helpful? Do you not think negotiations would be better towards that?

Mr. Ramm: I think so. My interpretation of the OTA position was not as severe as you are saying in terms of they are looking, as this gentleman talked about earlier, the level playing field in terms of the fact that the rules for those coming into the province should be the same for those who are already here.

Miss Roberts: This is my understanding of the act. For anybody coming to Ontario, no matter where you come from, the act says you have to meet the same rules. Whether you are from the US or Japan, you have to meet Ontario rules. That is my understanding of it. I think what they are saying is, "We do not want to have people even applying in Ontario unless we in Ontario can go and have a more open access into that particular state." That is my understanding. It is sort of as if they are trying to force us in Ontario to force someone in the US to do something. That is my understanding of it. I think what you are saying is you think on a diplomatic level we should be moving towards a more compatible, uniform trucking.

Mr. Ramm: Yes.

Miss Roberts: I think you are saying continent-wide.

Mr. Ramm: Yes.

Mr. Sterling: Now Miss Roberts has told you what you are thinking, I will ask a question. She was a lawyer before she got here and she has a terrible penchant for leading witnesses.

Let me ask you a question. In your estimation, in Metropolitan Toronto will there be fewer or more trucks after this is going through or will it have any bearing on the traffic in this metropolis? I will vote for this bill if there are fewer trucks in Toronto as a result of this bill.

Mr. Ramm: I think, first, you voted for the bill's predecessor. I do not know why you would change your mind now.

Mr. Sterling: I voted for this one on second reading. Do you think it would have any effect at all on truck traffic in Toronto?

Mr. Ramm: I think there are going to be an increasing number of trucks on our Metro roads and our Ontario roads in any event. Our interest goes beyond.

Mr. Sterling: I just thought with haulbacks maybe you would get a few more trucks off the road.

Mr. Ramm: I suspect we are going to have situations where there are trucks coming off the road because people will be manoeuvring their business in terms of developing backhaul such as our friend in the retail business suggested earlier. In other instances, you are going to have the entrepreneur coming in and providing a better service at a lower cost to the consumer. I think you are going to have a mixed bag, but in any event, we are still going to have more trucks on the highways.

Mr. Sterling: I would like to ask you the question of whether you would agree to the same rules as trucks follow in Chicago. You cannot go downtown during the daytime.

Mr. Ramm: You cannot? No trucks?

Mr. Sterling: No. That is how they resolved a bit of their problems.

Mr. Chairman: Anything else, Mr. Sterling?

Mr. Sterling: No thanks.

Mr. Chairman: Any other members with questions or comments? If not, Mr. Ramm, thank you very much to you and your colleagues for appearing before the committee.

Mr. Ramm: Thank you, Mr. Chairman.

Mr. Chairman: That concludes the business for the afternoon. Tomorrow morning we begin at 10 with the chemical producers. I urge members to try to be here as close to 10 as possible so we do not get backed up. Thank you very much.

The committee adjourned at 3:47 p.m.

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STANDING COMMITTEE ON RESOURCES DEVELOPMENT

ONTARIO HIGHWAY TRANSPORT BOARD AMENDMENT ACT
TRUCK TRANSPORTATION ACT

WEDNESDAY, AUGUST 24, 1988

Morning Sitting



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Richmond, Jerry M., Research Officer, Legislative Research Service

Witnesses:

From the Ministry of Transportation:

Kelch, Margaret, Acting Deputy Minister and Assistant Deputy Minister, Safety and Regulation

From the Canadian Chemical Producers' Association:

Goffin, Dave W., Senior Project Manager

Jensen, Alf, Chairman, Transportation Committee; Manager, Customer Services, Polysar Ltd.

Grist, Mark, Logistics Development Manager, C-I-L Inc.

Beasant, Graham, Transportation Manager, Reichhold Ltd.

From Pro Transportation Consultants Inc.:

Hellawell, Ken, President

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Wednesday, August 24, 1988

The committee met at 10:06 a.m. in room 228.

ONTARIO HIGHWAY TRANSPORT BOARD AMENDMENT ACT
TRUCK TRANSPORTATION ACT
(continued)

Consideration of Bill 87, An Act to amend the Ontario Highway Transport Board Act, and Bill 88, An Act to regulate Truck Transportation.

Mr. Chairman: We have with us this morning the Canadian Chemical Producers' Association. I am not sure who is going to lead off the presentation, but if you would introduce your colleagues and proceed.

CANADIAN CHEMICAL PRODUCERS' ASSOCIATION

Mr. Goffin: My name is David Goffin. I am on the staff of the Canadian Chemical Producers' Association. With me here this morning, to my left, is Mark Grist, from C-I-L Inc. here in Toronto. Next to Mark is Alf Jensen, with Polysar Ltd. in Sarnia; Alf is the chairman of our transportation committee and will be reading our brief. Next to Mr. Jensen is Graham Beasant from Reichhold Ltd., here in Toronto.

I apologize that our brief, although it was sent by courier last week, did not reach the office here until this morning. It has been distributed. With that is a booklet which describes our association and a couple of pages on transportation safety programs we have which you will see referred to in the brief which Mr. Jensen reads. With those few remarks I will turn things over to Mr. Jensen.

Mr. Jensen: Thank you very much for this opportunity, Mr. Chairman and committee members.

The Canadian Chemical Producers' Association represents more than 70 manufacturing companies which produce about 90 per cent of Canada's total output of manufactured chemicals. With annual production in the order of \$9.6 billion, the chemical manufacturing industry provides over 24,000 jobs in Canada and directly employs more than 15,000 people in Ontario. The industry also contributes to well over 60,000 jobs in downstream Ontario industries.

Within Canada's manufacturing sector, the chemical industry ranks fifth in terms of value of factory shipments, and more than 60 per cent of these shipments take place in Ontario. The CCPA's membership is organized in three product sectors: petrochemicals, inorganic chemicals and specialty chemicals. A brochure describing CCPA and listing its member companies was enclosed with our courier package.

Trucking, the dominant mode of freight transportation in Canada, is very important to the CCPA and to the Canadian chemical industry. The CCPA estimates that, on average, its larger member companies move more than 35 per cent of their total production by truck while for smaller member firms this average is more than 50 per cent. Both for-hire and private carriage are

important for the chemical industry. Approximately 52 per cent of CCPA members' domestic truck tonnage is moved by for-hire operators with the balance being transported by private fleets.

The CCPA supports the regulatory reform measures contained in Bill 88 which will, we firmly believe, provide increased competition, more responsive and flexible trucking services and competitive trucking costs, results which are fully consistent with the purpose of the legislation as set forth in section 2 of the bill. Bill 88 is a product of compromise, based on the lengthy deliberations of the Public Commercial Vehicle Act Review Committee, in which the for-hire trucking industry actively participated, and refined through the legislative process over the past several years.

As a result, all interested parties have had ample opportunity to express their views and the government has had ample opportunity to consider these views. The CCPA firmly believes that the time is at hand to bring this lengthy policy development process to an end by passing Bill 88 in its present form, as soon as possible and without amendment. Therefore, the CCPA urges the standing committee to make such a recommendation in its report to the Legislature.

The elements of Bill 88 which are important for the chemical manufacturing industry are:

The fitness test: The most important element of Bill 88 for chemical shippers, as for most other shippers, is the introduction of a fitness test for market entry, as supplemented by the provisions for a public interest test during the first five years the legislation is in force. The fitness test will assist entry into the trucking market, leading to the efficiency gains, innovation and lower costs which are associated with a more competitive marketplace. The CCPA would have preferred to see no public interest test in Bill 88 but, as we have stated, the legislation is a product of compromise.

At this time, the CCPA believes it can live with the public interest test because a number of procedural and substantive safeguards are built into the legislation: the onus on the person asking for the public interest test to make out a written case before a hearing is held; the requirement that the written case must not be frivolous and must show the likelihood of a significant detrimental effect on the public interest; the criteria to be considered in applying the public interest test, including the impact on the availability of appropriate trucking services to shippers and the ultimate impact on Ontario consumers of goods and services; the fact that an operating authority cannot be denied on the basis of a public interest test, but only limited in terms of the number of commercial vehicles authorized or, if the minister has raised the issue of provincial interest, granted with provisions that vary from those applied for.

As we have stated, the CCPA believes it can live with this double-barrelled entry test but, as practical experience with the test is accumulated after Bill 88 is implemented, the views of the CCPA and other interested parties may well change. In this respect, we feel that the role of the advisory committee on truck transportation which is created by section 36 of Bill 88 will be particularly important.

Private trucking: Given the current degree of use of private trucking by CCPA member companies, the provision for a certificate of intercorporate exemption under section 11 of Bill 88 is of considerable interest to CCPA. The definition of "control" as essentially holding voting securities of the

corporation carrying more than 50 per cent of the votes for the election of directors will help to make intercorporate trucking a viable and cost-effective alternative where company-affiliated carriers can be better utilized than for-hire carriers.

Other provisions of Bill 88 which are of particular interest to CCPA members are the provisions for special licences such as single-source authority and owner-driver authority under specified conditions, the availability of trip permits and the opportunity to enter into confidential contracts. All of these are provisions which CCPA has endorsed over the years, although each of them appears in Bill 88 with some restriction on availability.

As we have stated, though, Bill 88 is a product of compromise and the CCPA is prepared to live with these restrictions, at least for the time being. We suggest that the advisory committee on truck transportation should maintain these restrictions under careful review as Bill 88 is implemented, and make such recommendations regarding the restrictions as may become warranted.

On the expected impact of Bill 88 and the market entry issue, the CCPA is convinced that the market entry provisions in Bill 88 will provide a more competitive and efficient trucking industry which will open up exciting new opportunities for truckers, improve the availability of trucking services for Ontario shippers and ultimately prove to be of benefit to Ontario consumers of goods and services. It will introduce to the trucking industry the normal competition in the marketplace that CCPA member companies and other manufacturers already face in their markets. It will allow trucking, as a derived demand, to help support continued expansion of the Ontario economy.

In the United States, considerable experience with regulatory reform has been obtained since regulation of interstate trucking laws was reformed by the Motor Carriers Act of 1980. Whether the US experience is entirely applicable to Canada is debatable, because there are major differences between US and Canadian trucking. Nevertheless, it is worth noting the general view of the US chemical industry that the ease of market entry provided by US regulatory reform has promoted competition and spurred innovation within the trucking industry.

It is also interesting that surveys of US shippers show that service is the primary consideration in carrier selection in the deregulated environment. The US regulatory reform has forced carriers to work a little harder to satisfy their customers and be more responsive to shipper needs. As long as rates are reasonably competitive, it is the service aspect that is the principal factor in carrier selection.

The service factor will also be very important in determining whether Bill 88 results in the same trend in the use of private trucking by Ontario chemical shippers as that observed in the United States. In the US industry, the use of for-hire operators by chemical companies has generally increased at the expense of private trucking.

Naturally, when chemical manufacturers think about how they fit into the transportation industry, they consider themselves as shippers first and foremost and only secondarily as truckers. Chemical manufacturers and other shippers have turned to private trucking when their distribution needs for service, flexibility, timeliness, special equipment and other commercial considerations dictated that path.

The perception has been that the rigidities resulting from the existing

regulatory structure are largely the reason the for-hire carriers have been unable to meet these needs. Therefore, the expectation is that the increased competition in Ontario's for-hire trucking services provided by Bill 88 will offer a new option to those firms currently engaged in private trucking. Certainly, that has been the experience in the United States where for-hire carriers are offering better service than before and meeting complex and individualized shipper requirements at rates that are competitive with the cost of private fleet operation.

Therefore, as regulatory reform becomes effective in Ontario and as the new alternatives become available and recognized by shippers, there is every reason to expect that many shippers now operating private fleets will carry out thorough audits and carefully weigh the alternatives of using the new legislation to make their private fleets more cost-effective versus the option of increasing the use of for-hire operators at the expense of the private fleet. The latter option can be especially interesting, because the capital resource released by the reduction in private trucking fleets can be used for investments more directly related to the strategic objectives of the shipper's company.

The US experience with highway regulatory reform is also frequently referred to when attempting to estimate the effects of reform on motor carrier safety. These attempts present a confused picture at best, with some analysts insisting that since reform there has been an increase in highway accidents and with other analysts arguing just as strenuously that safety as such has not been deregulated and there is no factual basis to conclude that highway safety has deteriorated.

A recent US paper reviewed previous representative US studies and extended the analysis by examining the US highway safety record both before and after deregulation. This paper concludes that when properly measured, highway safety had been improving before US regulatory reform, and this improvement has continued following regulatory reform, but at a somewhat slower rate. Therefore, the US reform has been associated with, at most, a marginal deterioration in the rate of improvement in motor carrier safety, but safety has continued to improve.

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There is no reason to doubt that highway safety will also continue to improve in Ontario. Bill 88 requires all applicants for operating authority, or their employees, to pass the fitness test and to hold a ministry-issued certificate of competence attesting to the carrier's ability to operate trucks safely and within the law. The CVOR, commercial vehicle operator's registration, covered by Bill 86 provides for the close monitoring of operators so that irresponsible ones can be more readily identified and dealt with.

These Ontario initiatives are being supplemented by the introduction of a National Safety Code as well as the safety initiatives being instituted by shipper organizations such as the CCPA and truckers. For example, CCPA's responsible care policy includes a transportation code of practice intended to bring about, among other goals, a continuous improvement in safety and reduction of accidents. The CCPA is using the letters "CAER" in "TransCAER." Those four letters appear in other CCPA-sponsored initiatives. They mean "community awareness and emergency response."

This code is backed up by TransCAER, a program of activities which

supports implementation of the transportation code of practice, including a motor carrier evaluation process that assists CCPA member companies in selecting motor carriers. Truckers have also participated in a number of safety initiatives such as helping to establish truck routes and dangerous goods routes through municipalities and developing and sponsoring dangerous goods training programs and materials.

CCPA is convinced that the combination of new safety regulatory initiatives and shipper/trucker-initiated policies and programs, such as responsible care and its associated programs, will help to ensure that highway safety improves in Ontario during the period that economic regulatory reform is implemented.

Conclusion: Perhaps a Canadian trucker summed it up best when, during an interview with a Canadian transportation publication, he said: "For the 1980s, the watchwords are quality, productivity and training, and we are going to work very hard in these things. If you are tops in these areas, no one is going to beat you." Any trucker who takes these words to heart will contribute to the dependable and viable trucking industry which will be fostered by Bill 88. One Ontario trucking firm has written to a CCPA member company stating its full support for the new package of legislation and asking for our members' assistance in having it passed as quickly as possible.

Once this legislation is implemented, shippers will be able to obtain improved trucking services and competitive freight rates with the ultimate beneficiary being the Ontario consumer of goods and services. Accordingly, the CCPA urges the standing committee to recommend passage of Bill 88 as is and urges the Ontario government to complete passage of this long-awaited legislation as a top priority as soon as the Legislature reconvenes this fall.

Mr. Chairman: Thank you, Mr. Jensen. When the Legislature does come back in the fall in mid-October, the committee will be taking a week or a few days to go through clause-by-clause deliberation of the bills to see whether any amendments will be passed, if members want to make any amendments to it. It will be the first order of business for the committee when we come back.

Mr. Morin-Strom: Thank you for your presentation this morning and for appearing before the committee. I have some questions with regard to the position that the Ontario Trucking Association has taken with regard to this bill. They have said that they could not support the bill unless there were two amendments made to it. I would like to ask for your response to each of their amendments.

First of all, they are asking that an amendment be made to give the Ontario Highway Transport Board the power to deny a licence when it is found in a public hearing that the granting of that licence would be significantly detrimental to the public interest.

In your comments on page 3 you say with regard to the public interest test, "At this time, the CCPA believes it can live with the public interest test because a number of procedural and substantive safeguards are built into the legislation." In fact, it would appear the public interest test is a nonevent because there are currently no powers to be able to deny a licence. Would you support such an amendment as has been proposed by the Ontario Trucking Association?

Interjection.

Mr. Morin-Strom: I am asking if they would support the amendment.

Mr. Polsinelli: You should present the question properly.

Mr. Morin-Strom: You will have your time a little later.

Mr. Pouliot: On a point of order, Mr. Chairman: on style, method and approach, we need no lessons of decorum on ways to ask questions. We are under siege here, Mr. Chairman, if that is going to set the tone.

Interjections.

Mr. Chairman: Do not get caught in the cross-fire here, Mr. Jensen. Just direct your answer to Mr. Morin-Strom.

Mr. Jensen: I am the chairman of our transportation committee. We have a subcommittee on truck transportation. Graham Beasant and Mark Grist are representing our expertise in this area. They have done some work on this. I am going to refer that question to Mark for the moment.

Mr. Grist: By way of response to the question, the powers granted are basically that you can limit the licence of the operation to one vehicle, which is de facto a complete restriction on the operation. It is hard to imagine any harm to the public interest that could be caused by the operation of one motor vehicle in Ontario.

Mr. Morin-Strom: The question was, "Would you support that amendment?"

Mr. Grist: We feel the amendment is not required. Therefore, we would not support it.

Mr. Morin-Strom: The second amendment they have asked for is the inclusion of a reciprocity provision in Bill 88 so that the discriminatory effect of this legislation with regard to US carriers' rights in Ontario in comparison with Ontario carriers' rights in most of the states of the United States be remedied. I do not see anything in your presentation. Are you aware of the OTA's proposal for a reciprocity clause and would you be able to support it?

Mr. Jensen: We are aware of it and Mr. Beasant has our response for you.

Mr. Beasant: I have not seen the actual clause from the OTA. However, often when reciprocity comes up it regards movements within the United States. I think both for a US trucker to perform work within Canada and similarly for a Canadian trucker to perform work within the bounds of the United States, it comes more or less under the immigration and work permit rules. I feel that, in general, this topic is rather a little bit of a red herring.

Without any changes to permits for Canadian truckers to operate or actually perform work in the US under immigration laws and regulations, you are not going to get it on either side of the border. There is no way a US trucker can come into Canada now and run between two Canadian points and perform work that would normally be performed by a Canadian citizen, unless he

has either dual citizenship or has a work permit in Canada. I cannot see this taking place unless there is complete reciprocity between Canada and the US.

What has occurred over the last little while is that a number of Canadian trucking companies have in fact got US branch operations. Most of the larger trucking companies that are running into the US actually have US operations. They can combine those two regulations anyway. I would see the same thing in Ontario, that a US trucker would actually have to set up a terminal and have a Canadian trucking company to be able to perform that work.

Mr. Morin-Strom: The amendment is designed so that the rules, in terms of intraprovincial trucking in Ontario, would be applied in the same fashion to US truckers as applied within individual states, particularly those large states in the United States bordering Ontario that have very restrictive regulatory provisions governing intrastate trucking. Our understanding is that it is very difficult to get licences for intrastate trucking in at least 40 of the states of the United States.

I would like to know whether you would support a reciprocity clause as proposed by the Ontario Trucking Association.

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Mr. Goffin: I would like to have seen the Ontario truckers making more efforts to set out the states they want authority in and working with the government and through their own resources to urge the ability to get into those states they want to. Frankly, I have not seen much effort from the truckers in that direction.

In the United States, there is a lot of pressure to deregulate in the states. The Interstate Commerce Commission would like to see it. They have several cases for which they have said that a movement in a state that is preceded by an interstate movement is deregulated, and that is in the US courts now. There is a lot of pressure the truckers could be using to get into the United States if they really want to and if this is not merely a stalling tactic on their part.

The Canadian Trucking Association has been quite open about how successful it was for a number of years in holding back deregulation federally, and it makes us a bit suspicious about what the Ontario truckers are aiming for here.

Beyond that, one of the things the truckers say is that if the Americans do come in here—and we question whether they would, as Mr. Beasant has said—we are going to see a lot of price cutting in Ontario that could disrupt the market and perhaps lead to domination of at least parts of the Ontario market by US truckers. As we have said, we do not think that would happen.

Back in the time of the Public Commercial Vehicles Act Review Committee a number of years ago, the same arguments were raised by the truckers. At that time, we ended up with what was called a market test to back up the fitness test. Now we call the test essentially the same thing, the public interest test.

We are reluctant to support an amendment of that nature at this point. It could really result in holding up this legislation again. We have the

public interest test in the legislation. You may argue about how useful it is going to be, but it is there.

We also have the power for the minister to intervene in the public interest. We feel that if American truckers do come in here and have such an effect on the trucking market in Ontario that it is going to affect the public interest, the truckers are going to be able to oppose it that way. The public interest test is going to be in effect for five years and if there is a need for an amendment to the legislation, surely it could be carried out in those five years.

Finally, we look at this as Ontario legislation and we question whether the transborder aspects, or the issue of whether American carriers can be shut out of the Ontario market, can be dealt with in this legislation. It just seems to us to open up such a can of worms that we could be faced with a terrible delay in this legislation again if we supported an amendment of that nature.

Mr. Morin-Strom: I guess if we were to relate this kind of issue in terms of access to markets to your industry, one might ask you the question, if it were within the power of Ontario to allow unencumbered marketing of chemical products in Ontario from American producers, while at the same time the US market was being restricted to Canadian chemical products going into it, would you support Ontario opening up our market to their product when we did not have equal access to their market?

Mr. Grist: The reciprocity you were relating to there basically already exists in the transportation market. It is not a problem for a Canadian carrier to get complete operating authority on any international movement or interstate within the United States. I would challenge the OTA or others to come up with examples of where they have had member companies wishing to set up operations within a state and make representations and been denied.

I think this whole issue is being blown completely out of proportion, because there has been no evidence Canadian truckers have indeed been trying to get intrastate authority within the United States.

Mr. Morin-Strom: I do not think you have been talking to very many people in the trucking industry, if that is the case.

Mr. Grist: I talk to them on a daily basis.

Mr. Morin-Strom: I think it is a well-known fact that it is not difficult to set up a company in a state in the United States; the problem is to get the licence authority, because they are restricted. It is a situation similar to what it was in Ontario. The difficulty was not in establishing a trucking firm or forming yourself as a corporate entity; the problem was in getting the licence authority to be able to transport the goods.

Mr. Polsinelli: It is the same problem for everybody, for Americans and Canadians.

Mr. Morin-Strom: There is not going to be that problem for American truckers coming into Ontario.

Mr. Polsinelli: But in the United States, it was the same problem

for Americans and Canadians, not just for Canadians. There was no discrimination against the Canadians.

Mr. Chairman: Mr. Polsinelli, I will put you on the list after Mr. McGuigan.

Interjection.

Mr. Morin-Strom: No, it is not. Ontario is opening up its markets. The American states are not opening up their markets. There is not equal, reciprocal treatment of the trucking industry between Michigan and Ontario, for example.

Miss Roberts: Or between Manitoba and Ontario.

Mr. Chairman: Mr. Morin-Strom, are you all right for the moment?

Mr. Morin-Strom: I am fine.

Mr. Chairman: Mr. McGuigan, if you could ask some questions that do not get to Mr. Polsinelli, we would appreciate it.

Mr. Polsinelli: Sorry, Mr. Chairman, I will try to control myself.

Interjection.

Mr. Polsinelli: Mr. McGuigan, I must apologize because it was something earlier when Mr. Pouliot made a comment. I could not hold myself back. It was with no disrespect to your answering the question.

Mr. McGuigan: To my colleague, there is an old political rule that says, "Don't try to murder somebody who is already committing suicide."

Mr. Polsinelli: I will remember that.

Mr. McGuigan: That was a gem.

I notice something in your brief on the very last page. I think we have been meeting for only two days, but quite often the people who are in favour of the act point out that the ultimate beneficiary will be the consumer of goods and services, to which I agree.

It seems to me you are leaving out another beneficiary, and with deference to my colleagues on the opposite side, it seems to me that other beneficiary is the employees of companies that operate in Ontario, because as we become more competitive in the world—and we are in a very tight race with the United States, Europe and the Far East to produce goods at a competitive price—and as we make any move, whether it is in transportation or wherever it is, to lower the cost of goods, ultimately employees must benefit as well.

Mr. Goffin: Were you talking to Mr. Beasant before we appeared? The reason I ask that is that he called me and said, "You should modify the end of this brief to bring out that point." Frankly, we would have, except that the secretary who did this, in the world of high tech these days, has left our association, and we could not find this on our disc to change it to make the point. Mr. Beasant may want to respond to that.

Mr. Beasant: My company makes a lot of adhesives, especially for the

forest products industry. My transportation costs add up to anywhere between 35 and 50 per cent of my delivered price of services, and the amount of resin that is used for plywood, particle board and the other board industries is a significant part of their costs. By our keeping our costs down, they can sell more into the US.

I think one of the things that is noticeable within that industry is that we have another advantage in Canada that the American truckers do not have, and that is a significantly increased gross commercial vehicle weight. It will be very difficult for an American trucker coming into Canada to compete with Canadian truckers because of the fact that his equipment just cannot haul the payloads the Canadian equivalent does. We have taken every advantage we can to run to the maximum allowable gross vehicle weights, and we keep every opportunity we can to keep our freight costs down.

Yes, it does help employees of the forest products industry if we are competitive and producing our chemicals to enable them to produce their boards at a competitive cost. Then they can export, and over 50 per cent, I think, of the Ontario board production ends up in the US anyway. It is really significant to the downstream manufacturing industries that we keep our costs down.

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Mr. McGuigan: This is the first we have heard—again, we have been here only two days—that we have higher vehicle weights than they do in the United States. Except for the present moment, the Mississippi River has of course been a great, cheap transportation corridor. Here, I am drawing on my farm background. On either side of the Mississippi River, the soils will not bear heavy truck weights. They have a real disadvantage over there with their highways as compared to ourselves. Do you have any figures on truck weights in the United States as compared to here? Perhaps I am asking the wrong people.

Mr. Jensen: I think we have that expertise here.

Mr. Beasant: The maximum gross commercial weight throughout the United States of America is usually 80,000 pounds. There are some states that do have increased payloads, but none to Ontario's 140,000 pounds.

I believe that on the other side, Ontario, Quebec and Michigan are talking about putting some reciprocal weight rules and regulations in place, in which case I think that part of the concerns of the other member over there might be addressed at the same time. If we are going to look at reciprocal weight rules and regulations with a particular state, then maybe we should also look for reciprocal interstate licence authorities at the same time.

Mr. McGuigan: I believe it is a fact, if you check into it, that we will always maintain an advantage over the states on either side of the Mississippi River, unless they are willing to go to multibillion-dollar highways.

Mr. Beasant: One example with regard to my own company is that we ship to Maine. What we do actually is to take advantage of the Canadian rules and regulations. The quickest route is to run through the US. We in fact run through Quebec and down through New Brunswick. We run what is called a train combination, a V-train combination. We split the V-train at the border, shuffle backwards and forwards and then come back through Canada. Although the distance is significantly longer and the actual cost of the movement is that

much higher, the actual unit cost of the payload is lowered because of the Canadian weight rules and regulations. Even with reciprocity, we would still not consider running through the US to go to Maine. It is far better to run through Canada, through an all-Canadian route.

We have done similar things in other parts. We run out of the North Bay terminal, come down to Niagara Falls and do the same thing. We split; we run the two units back across the border separately and then we run back to North Bay. In that way, we are able to compete with the US truckers coming a lot shorter distances.

Mr. McGuigan: On the matter of safety, and I might explain this, I think I have logged a million miles myself behind the wheel of a truck. I look at trucks and am interested in trucks. I live south of Chatham and I see your trucks coming down through Wallaceburg, Windsor and so on. They are tremendous trucks. I would like to have the opportunity to drive one.

Mr. Beasant: You will have to qualify and obtain the appropriate permission, of course.

Mr. McGuigan: I am personally amazed. They are tremendous vehicles. Looking at them, you say, "There is \$250,000 rolling down the road on 48 tires," or something of that nature. It strikes me the drivers you put into a \$250,000 rig would have to be some pretty responsible people. The gasoline delivering people come to mind. Is gasoline included in your organization?

Mr. Jensen: Not in the CCPA organization. The Ontario Petroleum Association represents gasoline hauling, for example, but some of the companies in our group are the same—Shell Canada, Shell Canada Chemical, Esso Chemical Canada, Esso Petroleum Canada—so we work very closely together.

Mr. McGuigan: What I noticed about these people is that they are really top people, the drivers they have. They are under very, very strict rules. While I have no direct knowledge, I certainly make the assumption that they are very well paid. What I am coming to is that the movement to really adequate trucks for the job demands that you have really qualified people driving those trucks, and I think this is part of the reason that safety figures are improving.

Mr. Grist: It is not just the value of a vehicle, of course; it is the potential liability to a chemical company should anything untoward happen to that vehicle. This is part of the reason we are so strongly committed to the responsible care program, our approach to the motor carrier evaluation program we are putting in. We want to make sure that everything is done to ensure that the product is handled responsibly once it leaves our plant gates until it is delivered to the customer, because there is so much at risk both to our companies and the environment.

Mr. McGuigan: Do you have any figures on the safety of the chemical transport industry as compared to the rest of the trucking industry?

Mr. Grist: Do you mean a direct comparison of chemical goods hauled versus other goods?

Mr. McGuigan: Yes.

Mr. Beasant: I think most of the major bulk carriers are probably running at less than one accident per million miles. I believe the general

carrier industry is probably around about two or three accidents per million miles. I do not really have an exact figure on that.

Mr. Jensen: The motor carrier evaluation program we are entering into as part of the responsible care program delves into those very issues. It asks the carrier that our company or others are about to use all sorts of intriguing questions about their driver training and about their maintenance programs. That has to be shared with the shipper by the transport company before it gets a nod of approval. As I see it, it is only the very irresponsible who would select a carrier in future that does not meet all of those requirements.

Mr. Grist: We are not just relying on the carrier's word on this. We are going to be sending out auditing teams to make sure that what the carrier is representing to us is actually fact. Every carrier we will be doing business with will be subjected to a CCPA audit.

Mr. McGuigan: The testimony of this gentleman here that there is a 100 per cent difference between the general rate and the chemical rate would indicate to me that a safety program such as is being brought in under the act has scope to be very effective and to improve or put the whole trucking industry up in that position or better.

Mr. Beasant: I think the biggest threat to the whole of the trucking industry in the next few years is— Actually, you mentioned drivers; there is a shortage of drivers. It is coming. We are going through a cycle probably of baby bust rather than baby boom. The American trucking industry is already talking about a vacancy of 250,000 drivers.

From a chemical industry perspective, normally my own company looks for at least seven years' experience. It is getting very, very difficult to attract drivers unless you pay them extremely well and treat them extremely well.

I think part of this bill will encourage efficiency within the industry and maybe have a positive impact on the number of drivers who are required. I think if firms market their services properly, we can cut down a lot of the empty and the dead miles on the highway and therefore reduce the number of trucks and truck drivers we may actually require.

It is going to be something the industry has to face in terms of training. There has been some push for 18-year-old truck drivers in the US, which we definitely do not support and which we feel very much against. We feel the minimum age should definitely be maintained at 21. In fact, for our own industry I think we are looking at truck drivers who are a lot older than that, a lot more experienced.

Mr. Wiseman: I just have a brief question. It goes back to an uncle of my wife's who was hit by a chemical carrier truck a few years ago. They nearly drove this widow crazy. They found that the truck was at fault, but the trailer was owned by the chemical company, I guess, and insured by them, and the truck was insured by the driver. She was an elderly lady and she lost her husband and nearly lost her daughter. They just kind of wore her down over a long period of time in the courts and one thing or another. It ended up that because he was an old man, she got nothing to keep her the rest of her life.

I just wonder if this is a common occurrence, where the trailer is owned by the chemical company and the tractor is owned by the owner-driver. Is there

not something which could be done to co-ordinate? One would blame the other: One said it was the truck that killed him, and the other said it was the trailer with the contents that killed him. I just wondered. I know this is the safety part of it, but the poor person out there having to defend himself: one was dead and the other seriously injured. What happens in a case like that? Is it a common occurrence that that is the way you insure your loads?

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Mr. Grist: It is not that common an occurrence percentagewise. There are companies that do operate on that basis. I am not familiar with the case, but generally the responsibility rests with the power unit. Insurance and liability would rest with the carrier, the person pulling the equipment.

Mr. Wiseman: Is that like a legal opinion or is it—

Mr. Beasant: Our insurance company charges us purely on the number of power units that we have and not on the number of trailers. They are interested only in the power units, and our insurance in fact is assessed just on the power unit. They feel that the power unit is responsible, no matter who is following. So we do not pay anything on the trailer. My own insurance cost is just built up purely on power units, so I would say definitely the power unit is responsible.

Mr. Wiseman: That is what they ran into. One would blame the other, and she spent a long time in court at an age where she should not have, I felt.

Mr. Pouliot: Mr. Goffin, I too was impressed with your submission. It is nice to see that the guiding thrust, the force behind your presentation is indeed the protection of consumers, which makes me wonder if equal billing should have been given to people who invest in your companies in terms of a fair return on investment. But you were overtaken by generosity in saying that, in the long run, the consumers will indeed benefit the most. You come from a very, very competitive environment, sir, and I would have liked to see equal billing for people who invest their hard-earned dollars in your corporation.

Mr. Goffin: They do not need it right now; they are doing very well.

Interjections.

Mr. Pouliot: My dear friend, I have lost more in that market than you will ever invest.

On the subject of safety, I am sure that you perhaps, and for obvious reasons, would be as aware as most shippers, if not more aware, of the need to have safety codes that are commensurate with the goods you are carrying. I think rightly, when we are talking about the transportation of chemicals, if people are not sceptical, they are a little bit scared because they are not all that knowledgeable, and we too wonder, are the guidelines being followed?

At the present time, would you say that the transportation code as it pertains to chemicals is adequate? On safety in the transportation of your chemicals, are you satisfied with the requirements from the government?

Mr. Jensen: Our transportation code is designed by the Canadian Chemical Producers' Association members under the responsible care, and the responsible care includes not just transportation but also manufacturing.

There are seven different codes that we are adopting, one at a time, and then preparing to follow. The transportation code that we talk about as CCPA members is our own program that puts in place all of the requirements that would make me feel happier if I were down the road watching a truck or a tank car go by.

Remember that I said the CAER, the community awareness and emergency response, and only yesterday I was asked about sending our TransCAER co-ordinator, which is a new job in the industry that I represent, whose main job is the safety and safe performance of what we are doing in transportation, not just inside the fence line of a plant manufacturing but as it goes out, as it is being used or as they are bringing in other feedstocks that are in the same category. So it goes far out and we are taking that as a very serious undertaking.

Mr. Pouliot: So broadly summarizing, you would be satisfied with the present system of highway safety in Ontario?

Mr. Beasant: With the improvements that are coming through now with the National Safety Code and the commercial vehicle operator registration program, which I think is a tremendous help, the CVOR program to help eliminate—and there is nothing I have ever seen that says the existing licensed carriers are necessarily safe carriers. Some of them do not have very good safety records.

One thing is that in general, I think, it appears that the trucking industry always thinks that the shippers are interested in only one thing, and that is rates. We are not. The first thing we are doing as transportation managers is to purchase a service.

We have to be sure of our suppliers to be sure they are going to be there for a long time. We do not necessarily chop and change just because somebody gives us a better rate. To be honest with you, I am very suspicious if somebody comes in and offers me a rate that I know is less than his cost. He is not going to be around too long.

I need good, dependable, reliable transportation services, and for the service that I require, there are different costs for different levels of service. If you want it overnight, you are going to pay a little bit more than if you can wait two or three days for it, and the transportation industry reflects those rates. You have convenience rates which are a lot lower than that.

My first job is to make sure my goods get there safely in one piece. If they do not get there, I have not done my job in the first place. The trucking industry tends to ignore that aspect of our professionalism, I think.

Mr. Pouliot: The reason, the intent and the spirit behind my question is that I do not think we will be receiving submissions from presenters who are more important when you tie them with the safety aspect.

I want to be quite clear on this. The Mississauga tragedy identified pitfalls and shortcomings, as calamities often do. This world is really not perfect. Studies indicated that quite often there was a lack of identification on the transportation of "dangerous or hazardous chemicals," if you wish, and furthermore, quite often the drivers were not aware of what they were

carrying, of the contents of their truck. Mind you, the list of chemicals is about this long and it keeps growing.

What I am concerned about is that, in this quick-moving world, where competition becomes the order of the day, where the focus is on value for money, expediency and saving a buck, which is a normal reaction—in fact, some would say it is a vocation, or is it a duty, Mr. Jensen?—the safety factors would tend to be bypassed, safety would not be at its maximum when choosing, when making a deal, a contractual arrangement with the companies that are going to transport chemicals back and forth, for instance.

That is a fear I have, especially when it comes to accident prevention and safety on our highways. If you are dealing with unloaded tandems and butter, it is not as bad as when you are dealing with cyanide and sulphur dioxide. The standard of safety in your industry should be the maximum, not the minimum that the law requires but beyond the call of duty. It should always say maximum, maximum.

1100

Mr. Grist: I would like to respond, now that you have touched on a couple of my company's products. You raised the point about drivers perhaps not knowing what they are carrying and the dangerous goods aspect. That area is very heavily regulated under the federal transportation of dangerous goods regulations. Part of that provision requires that you identify the product clearly through placarding the vehicle and also by identifying right on the bill of lading, which every driver must sign, the classification of the product and exactly what that product is.

We go further than that. We provide material safety data sheets on every shipment, which clearly identify what the product is, what the hazards of the product are, what to watch out for and what to do if something goes wrong. We feel that we have a very good record in ensuring the public safety in this area. We feel that these bills are going to help us continue to ensure that they are handled in a responsible way through things like the CVOR.

Mr. Beasant: Within our own industry, I think the term is "negligent entrustment," because we hire the carrier. If anything happens to the carrier and the carrier cannot pay for an accident, they will probably come back to us.

I think this was the start of the motor carrier survey in the US where a major chemical company used a small carrier that had a major accident and ultimately the Pennsylvania Turnpike Commission sued the chemical company. One, it is the deep pocket approach and two, the statement was, "You had the choice to select that carrier; therefore, you must bear the responsibility for part of that carrier's actions."

In Ontario you also find that under section 9 of the Environmental Protection Act where we have to pay 50 per cent of the cleanup costs whether we are involved or not. As long as we have charge, management or control of the goods, we have to pay those cleanup costs. The cleanup for a single tank-truck accident can be \$1 million plus. It is very much a part of my job to make sure that we do not have accidents and that safety is paramount in our carrier selection.

Mr. Pouliot: Are you using more and more road as opposed to rail? What is the trend nowadays, let us say in the past five years?

Mr. Beasant: I think it is changing with rail deregulation. It will

be interesting to see how rail deregulation affects the motor carrier industry, especially on the long-haul basis. I do not know if Mark—

Mr. Grist: I just have one other point to raise here. What we are trying to impress upon you is that we are very concerned about safety. We have a lot at stake in this issue. When you have economic regulation of the transportation industry, you may be limited in your carrier choice to one or two carriers who can provide the service because of the economic regulation. You may want to make a decision on carrier selection based on safety and be limited in being able to make that decision because the guy you want to use who is safe does not hold an operating authority. There is an example where the existing situation can impair safety.

Mr. Chairman: Mr. Pouliot, I am sure that we are all sorry that you lost money investing in the chemical industry, but you should know that socialists tend not to do well when they invest in the stock market, mainly because it is God's way of punishing them for being socialists in the first place.

Mr. Pouliot: God was asking me to be poor as well.

Mr. McGuigan: On the matter of the safety code, I am concerned about the downstream effect, when a truck leaves your plant and has all the data and the driver is concerned that he might get involved in an accident or a leak or whatever in some other community. Do the fire people or emergency people in that community have manuals or do they have a system of getting back to you or determining what they are dealing with and getting instructions and so on? What is the downstream safety?

Mr. Jensen: The emergency response?

Mr. McGuigan: Yes.

Mr. Beasant: The CCPA have what they call the TEAP committee, the transportation emergency assistance plan. We have a mutual aid pact among the members of the CCPA for part of this.

What it requires me to do is operate an emergency response centre in North Bay. If another chemical producer calls me for assistance in an accident, I must, under my contractual obligations, respond on his behalf. What we try to do is to make sure we have a network of response centres across Canada to assist the authorities in dealing with a chemical emergency.

There are so many chemicals and there are so few full-time fire brigades within Canada that it is almost essential that you get good technical expertise there. We do have a relationship with the Ontario Provincial Police constables who deal in hazardous commodities. We get to know them for our local area. By and large, in Ontario it is normally an OPP officer when you get outside the main city who actually becomes the person in charge.

Mr. McGuigan: They would know enough to contact you?

Mr. Beasant: They have known and we have responded just on a personal basis. They will call us and say: "We cannot understand what this is. Would you come down and have a look at this truck?" Even if it is not chemical manufacturers, we will go.

Mr. Jensen: In every geographic area in Canada, there is access to

TEAP. If it is my product going by his geographic area, he is going to get the call through the system, set up within the federal and somewhat in the provincial area, communicating that there is an incident. That person will be responding for the first 24 hours until our people can get there. The response is already a proven fact of life by the CCPA member companies.

Mr. Beasant: Our TEAP committee is actually two ex officio government members. There is Mike Salib from the Department of Transport and somebody from Emergency Planning Canada at the same time. We do have a fairly good relationship with agencies such as Canutec, which is the Canadian Transport Emergency Centre, and things like that.

Mr. Goffin: More generally, the shipping document that Mr. Grist referred to has the shippers' 24-hour emergency response telephone number on it, so that the department can get immediately to the shipper. If there is any problem they know to go to Canutec, the federal communications system that Mr. Beasant referred to, for assistance in reaching the shipper.

I am not aware of any incidents that our members have been involved in since the dangerous goods regulations came into effect in which there was any significant difficulty in getting back very quickly to the shipper who is involved.

Mr. Beasant: The one thing that Mr. Pouliot mentioned before was Mississauga. We have been talking to the railways. We are coming up to the 10th anniversary of Mississauga. With the changes that have occurred since Mississauga, we do not believe that Mississauga would occur in the same way. We have had a lot of structural alterations to tank cars. When we do have an accident, we do learn as an industry and try to make sure it does not happen again.

Mr. Pouliot: Twenty per cent of truckers in this province operate illegally. For us it is a contradiction of sorts that you should suddenly find yourself by virtue and reason of your time to have a social and a safety conscience, when in the first place you operate illegally.

What is being asked here is important and serious because if you are like everyone else, it means that one out of five carriers you deal with is illegal. The people who tend to be illegal are not the first ones to put safety as a priority.

Mr. Jensen: There is one safety aspect in Ontario that we should mention. That is, I believe, and you clarify this among yourselves, the program that the Ontario Ministry of Transportation has embarked on to train more people to catch those people you talk about on the highway. It is too bad that they get there, but certainly that activity, when combined with all the others, is going to have a very positive impact on those people you talk about. Yes, they are out there. Our mutual goal is to reduce that to zero one day.

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Mr. Chairman: On behalf of the committee, thank you very much for appearing this morning with your colleagues. We appreciate your appearance here.

The next witness before the committee is Ken Hellawell, who is president of Pro Transportation Consultants Inc. That is a very substantial name for

your company, Mr. Hellawell. Welcome to the committee. We are pleased you are here.

Mr. Hellawell: Do you want me to read this or do you have copies in front of you?

Mr. Chairman: Yes, the copies have been distributed.

PRO TRANSPORTATION CONSULTANTS INC.

Mr. Hellawell: We are in the safety area. I sit here and listen to some of my friends who just left and I wonder if you do not get treated like a mushroom, because there are so many things in the area of transportation that kind of get answered in different directions.

I think some of your concerns, with regard to illegal carriers and that kind of thing, were right on line. That is the area that concerns us.

Mr. Chairman: We are all ordinary MPPs on this committee, so we know what it is like to be treated like a mushroom.

Mr. Hellawell: Knowing transportation, I felt while I was sitting here that I should be sitting here giving you the answers to some of the things that they were answering.

I started as a driver in 1949 and have been in transportation all my work life. Our company is involved primarily in driver training, and we also have a division which does delivery of new vehicles to and from manufacturers, customers and so on.

In the area of driver training, we do get involved with some American carriers. We do some close-to-the-border areas of training and have had quite a lot of experience with Canadian carriers running into the US, for which we do road testing, training and driver selection.

The area of concern to me is—and you touched on it, sir—intrastate trucking. It is regulated in the US and not regulated in the new bill coming out in Ontario, so a carrier out of the United States with a Canadian driver, if that be the case, if you are worried about immigration, could go point to point in Ontario doing business and there would be no illegality, no reason that he should not be able to do this.

If a Canadian carrier were to do that in the United States, it would be called intrastating, and he would be charged if he did not have authority. It is fine to apply for authority in the United States. It costs a lot of money to do that. It could be up to \$100,000 for a major application of that kind of thing in the United States. So it is certainly not a level playing field in that direction of authority.

If we look at the American carriers compared to the Canadian carriers in the safety area, they do not do the things in safety that we do in Ontario. I think the Canadian is a little more concerned about safety. A prime example would be Yellow Freight System, which just took over ICL International Carriers in Ontario. ICL had five safety people; with a US carrier at the helm it now has one. That is just one area of safety we are looking at.

The other thing is the small community. The small carrier in the small community has habitually supported that community in daffodil parades, the

local baseball team and that kind of thing. If the Americans go for the buck and never spend a dollar or put anything back into it and take the lucrative business out of that small community, it will kill that small carrier. They will not look after Joe Blow with his small freight; they will just take Dow Chemical with its big freight or big money. That is the attitude they will have towards the small community.

Those are generally the areas I am concerned with in this regulation, that we will not have an equal opportunity, that there will be nothing beyond the fitness test, the necessity for the community and that type of thing.

Mr. Chairman: Mr. Hellowell, before we get into it, how do you operate your business? Do you have a large truck yourself that you use for training?

Mr. Hellowell: No, everything we do is in industry. We go to the companies, spend our time in industry. One of my customers just walked out; he was talking to you. We go into the companies and we work in industry. I would say the majority of our customers are private carriers.

Mr. Chairman: So you go and offer your services to train new drivers for them?

Mr. Hellowell: Yes. We will start out with road testing and selection. Then we will go through some companies with product training. With some we will go through product training with another driver, and then we will do defensive, on-road driver training with them, anywhere up to 16 hours per driver. Some companies will do all their safety in the way of meetings, selection, hiring, the whole thing, depending on how much safety they have in-house.

Mr. Chairman: So the people who work for you must know how to drive any kind of truck out there?

Mr. Hellowell: Absolutely.

Mr. Chairman: And they train in everything to do with safety, handling, etc.

Mr. Hellowell: Brakes, load lengths, licensing, axle weights, whatever.

Mr. Wiseman: In the training, do you go back after so many years of driving for a particular company? Do they bring you in to test the drivers after eight or 10 years?

Mr. Hellowell: Ongoing evaluations, yes. The most stringent program we have would be the hiring, selection and product training, on-road defensive driver training and then, once a year, eight hours' on-road testing. It is product handling and driver evaluation on-road. We have a seven-page form: "yes," "no," or "needs training." He is checked off on the different aspects of handling, attitude, public defensive driving, the whole darn thing.

Mr. Wiseman: Is there a medical given to drivers every so often?

Mr. Hellowell: Yes. For Ontario's classified drivers, it is every three years.

Mr. Pouliot: How long have you been in the trucking business?

Mr. Hellowell: With my own business?

Mr. Pouliot: Yes, and associated with trucking in general.

Mr. Hellowell: Since 1949. I started driving a truck.

Mr. Pouliot: So you would be pretty well an expert in all phases of trucking?

Miss Roberts: No, he is a consultant.

Mr. Hellowell: I am a consultant, too.

Mr. Pouliot: You are a former trucker.

Mr. Hellowell: I have sat on many committees and am a past president of the safety council for the Ontario Trucking Association, past president of the Ontario Truck Rodeo Association, past president twice of the Transportation Safety Association Council of Driver Trainers and past president of the Motor Vehicle Safety Association of Ontario. Does that answer your question?

Mr. Pouliot: Yes, partly. I, too, have a friend—Marietta, stay a while—who is a consultant. He knows 197 ways to make love but does not know any women.

On a more serious note, I was sincerely concerned about your statement about small carriers not being able to compete. When I hear this short sentence, would I be right in assuming that possibly deals could be done in the larger centres, but people in small communities or with small carriers are left having to pay what the market will bear, because competition will not be the order of the day there?

Mr. Hellowell: I believe that to be what is going to happen. I believe that if the lucrative business goes, the small carrier who looked after Joe Blow the same way he looked after industry, who maybe gave Joe Blow a break because he could make a little extra buck off industry, will fold up because all he will have left is Joe Blow, who is at the bottom of the barrel anyway.

Mr. Pouliot: Contrary to what the ministry is saying—I am the one who is saying this, not Mr. Hellowell—in the real world of trucking you know so well, sir, when the competitive spirit gets alive, because this is intended to add more competition—all factors in the free enterprise system are centred on competition—this element will be well. The private sector always chooses better. You do not need any regulations; you do not need any such thing. The marketplace will take care of it.

Do you see more mergers or more takeovers? We know in California 350 carriers went out of business.

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Mr. Hellowell: Yes, I think so. It has been the prime thing here now with some of the American people I have associated with: "Who is for sale? What can we buy?" They want to do it now. They do not want to wait for deregulation.

Mr. Chairman: Mr. Hellowell, I wonder if you could lean forward a bit. Hansard is having trouble picking you up.

Mr. Hellowell: Yes, sorry. Some of the American carriers we deal with now are continually on the question: "Who is to buy? What is for sale?" They are looking for any licences and that type of thing that they can get at this point.

Mr. Pouliot: One last question. Do you see safety being compromised when the going gets tough and you are fighting for every buck and you are from hand to mouth or, let us say, trip to trip?

Mr. Hellowell: Yes, I think so. I think the prime example was touched upon by our friend here with the leased tractor. The trailers may belong to somebody but they have leased the tractor from somebody else. What kind of safety goes to that single operator? That is what is happening. We have owner-operators now. One of our plugs out there today is the owner-operator. What kind of safety goes to him?

I touch him coming into Kingsway, Servall, UTL, some of the larger carriers that may be road testing because they have had problems with this single operator. I touch him on road tests and 50 per cent of them are turned down. They do not pass. They may have been driving for 20 years, but because of the attitude towards the public, attitude of the other users, they are on their own. That is the reason most of them will fail, not because they cannot drive their truck.

Mr. McGuigan: Mr. Hellowell, I understand the ATA is on record as saying that within the industry they do not have cost subsidization. The long haul trucker or truckload does not subsidize a load up in a smaller community. The rates already in that small community reflect the extra cost of picking up. I have shipped full loads and I have shipped part loads on trucks and I am fully prepared on my small load to pay a higher cost because I know they have higher costs coming in to pick up my small load than when they get a full load. I have some trouble accepting this notion that by having more entries into the field that it is going to mean the remote areas pay higher costs. I do not see the connection. The ATA have said they do not have cost subsidization.

Mr. Hellowell: ATA, USA?

Mr. McGuigan: No, the Ontario Trucking Association.

Mr. Hellowell: I do not know whether there is any subsidization or cost figured into that area. The thing that might happen in the smaller community with trucks going into the area may in turn eliminate the small guy in the area type of thing if there is something lucrative in there. That is the point I am trying to make. It may in turn take the small carrier in Elliot Lake, Ontario, and destroy him because they can get in there, when he is out of there doing something for whomever in that area, and that is his bread and butter. They may in turn take his return load back in there that he is normally getting and they may get on the road to pick up from somebody else because his jurisdiction is not there.

Mr. McGuigan: Why is that any different to the present circumstances? Truckers are not forced to go to certain points.

Mr. Hellowell: They are restricted into that point or from that point.

Mr. McGuigan: But they are not forced to go in and pick up a load in

the small community. They pick it up now because the extra rate they charge for that small pickup, or the extra distance, pays them. I do not see how that changes before or after the change in the act.

Mr. Hellowell: LTL or less than truckload is more expensive than straight load, certainly. What I am referring to is that now with the present situation, unless you are licensed in or out of a jurisdiction, you do not go there. What is going to happen with somebody that now can run around the corner in another jurisdiction and take this guy's load who has made his livelihood and built his company in that community because of his licence?

Mr. McGuigan: Surely that person is going to operate a business and cannot extend the period of time at a loss.

Mr. Hellowell: That is why I am saying with the interprovincial undertaking that is coming in deregulation there is nothing to stop him from going in route through these small communities and taking that business away from that guy. You can only operate the business as long as it is solvent. If his business goes, it becomes a choice of closing the door.

Mr. Chairman: Are there any other questions from members? If not, Mr. Hellowell, thank you very much for appearing before the committee.

That completes our witnesses for the morning. This afternoon I know the members want to be here at two o'clock to have a dialogue with Patrick Reid and the Ontario Mining Association.

The committee recessed at 11:25 a.m.

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STANDING COMMITTEE ON RESOURCES DEVELOPMENT

ONTARIO HIGHWAY TRANSPORT BOARD AMENDMENT ACT
TRUCK TRANSPORTATION ACT

WEDNESDAY, AUGUST 24, 1988

Afternoon Sitting



STANDING COMMITTEE ON RESOURCES DEVELOPMENT

CHAIRMAN: Laughren, Floyd (Nickel Belt NDP)

VICE-CHAIRMAN: Wildman, Bud (Algoma NDP)

Brown, Michael A. (Algoma-Manitoulin L)

Collins, Shirley (Wentworth East L)

Leone, Laureano (Downsview L)

Marland, Margaret (Mississauga South PC)

McGuigan, James F. (Essex-Kent L)

Miclash, Frank (Kenora L)

Miller, Gordon I. (Norfolk L)

Pouliot, Gilles (Lake Nipigon NDP)

Wiseman, Douglas J. (Lanark-Renfrew PC)

Substitutions:

McGuinty, Dalton J. (Ottawa South L) for Ms. Collins

Morin-Strom, Karl E. (Sault Ste. Marie NDP) for Mr. Wildman

Polisnelli, Claudio (Yorkview L) for Mr. Leone

Roberts, Marietta L. D. (Elgin L) for Mr. Miller

Sterling, Norman W. (Carleton PC) for Mrs. Marland

Clerk: Mellor, Lynn

Staff:

Richmond, Jerry M., Research Officer, Legislative Research Service

Witnesses:

From the Ministry of Transportation:

Kelch, Margaret, Acting Deputy Minister and Assistant Deputy Minister, Safety and Regulation

McCombe, C. J., Director, Office of Legal Services

From the Ontario Mining Association:

Reid, Patrick, President

Johnston, Kenneth R., Manager, Transportation and Traffic, Ontario Division, Inco Ltd.

From United Westburne Inc.:

White, George S., General Manager, Westburne Distribution Services Division

From the Canadian Transport Lawyers' Association:

Madras, Mark L., Ontario Director; Partner, Strathy, Archibald and Seagram

Warren, Robert, National Secretary; Associate, Weir and Foulds

AFTERNOON SITTING

The committee resumed at 2:07 p.m. in room 228.

The Acting Chairman (Mr. Morin-Strom): I call the afternoon session to order. Our chairman, Floyd Laughren, was detained at a luncheon meeting with our party's esteemed leader and he has asked that I fill in as acting chairman.

Mr. Wiseman: Was that because of his remarks this morning?

The Acting Chairman: Maybe some censorship. I do not know.

Mr. Wiseman: I hope.

The Acting Chairman: We will start this afternoon with representation from the Ontario Mining Association. We are pleased to have with us Patrick Reid, president of the Ontario Mining Association, along with Ken Johnston, manager transport and traffic for Inco Ltd.

Our procedure here generally has been to leave the floor to our guests to make a presentation of up to half an hour. They can use any or all of that time and then we open it up to questions. Thank you for coming today.

Mr. Reid: Ladies and gentlemen, you will be happy to know that we will not require half an hour of your time, unless you have a large number of questions.

Mr. Wiseman: Things change when you are a politician.

Mr. Reid: In response to that, Mr. Chairman, and I will only respond once: I know how these things can go, having been on the other side. We have everything you want to know in this brief, so you will not have to ask many questions. I shall not read the entire brief into the record. You all have copies. There are other copies available from your clerk.

ONTARIO MINING ASSOCIATION

Mr. Reid: The Ontario mining industry association's involvement in this matter of deregulation goes back to 1981. The Ontario Mining Association supports trucking transportation deregulation and Bill 88. The natural resource industries in northern Ontario were not participants in the original Public Commercial Vehicles Act review. We were then and still are concerned that there is a lack of information and perception concerning the impact of the resource industries on the gross provincial product.

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I see a number of members of the committee who have mining companies and mines in their ridings, so I will spare them and others going through the numbers, but the mining industry contributes greatly to the economic performance of this province and we are a very large part of the foreign exchange dollars that are earned by Canada, because most of our minerals, at some point or other, are exported.

We are also very interested in the development and improvement of the northern communities in Ontario. We do represent or have mines in southern

communities as well, but the trucking business is very large in the impact it has on our ability to transfer our products. Red Lake, Ignace, Thunder Bay, Wawa, Manitouwadge, Pickle Lake, Elliot Lake, Sudbury, North Bay, Temagami, Cobalt, Kirkland Lake, Timmins, Kapuskasing and Cochrane and a number of other communities are completely dependent on mining and forestry and represent, to a large degree, the promise of northern Ontario now and beyond the 1980s.

The Ontario Mining Association represents 46 companies operating mines all across Ontario. In the last year, we have produced something like \$4.2 billion worth of minerals. Ontario is Canada's leading producer of metals, particularly nickel, copper, zinc, iron ore, silver, gold and platinum. The production of metals makes up approximately 20 per cent of the province's total exports.

Mining also has thousands of suppliers of goods and services who both contribute to the industry and are dependent on it. The association estimates that our members bought some \$2 billion worth of supplies from companies in Canada last year, much of which had to be delivered to the various mine sites by truck.

In 1988, the 26,100 people directly employed in mining and mineral processing made up one per cent of Ontario's labour force, but this one per cent produced over four per cent of the gross provincial product. This is a tribute to the productivity of our workforce and a recognition of the capital-intensive nature of the business.

We should also emphasize that although mining employees comprise only one per cent of Ontario's workforce, the mining companies directly employ eight per cent of northern Ontario's workforce and, indirectly, upwards of 30 per cent.

Mineral production is very important to the economy of Ontario, and we have intense competition in the world markets. Since most of our product is exported, we are subject to the prices set by international trade or the world market.

On page 5 of our brief, we talk about the factor of remoteness and the distances between communities and centres. The association urges the committee to take into account not only the special status of the north as a distinct and different kind of constituency, but also the unique problems created by the nature of the land and its geographical remoteness from the principal centres of population and distribution in Ontario.

The transportation industry does, of necessity, relate to one or another of the province's natural resources: mining, forestry and energy. The trucking industry too has a dependency on the natural resource industry for prosperity. Costs are substantially higher in the north than in the south due to many factors. Transportation costs for fuel, maintenance and operating supplies are affected by the additional distances, poor roads and the extremes of weather. Developments in the north are, at best, slow, difficult and expensive.

Legislative history in Ontario, particularly with respect to mining, has successfully blended input as well as the requirements of both self-regulation and legal compulsion. The results achieved have been superior by any objective standard of measurement. The association stresses the importance of co-operatively arriving at legislation that accommodates the unique characteristics and the needs of the industry.

The association restates at this time its support for Bills 87 and 88, which are the subject of interest today. Any legislation which ignores the constantly changing economic values will eventually result in a lack of credibility for and acceptance of the law. Within the foregoing context, there is merit in easing or eliminating regulations pertaining to the movement of goods, leaving the willingness and ability to do business to those who are fit, willing and able to move the goods.

These are some of the hard realities of the mining industry in Canada and in Ontario today. There are good reasons, we believe, why Canadians should be in favour of a strong, healthy and vigorous mining industry, good reasons why governments at every level should act with fairness and foresight when they frame legislation affecting our industry.

We have made these statements before, to the PCV review committee. The federal paper, Freedom to Move, was issued in 1985. Since then, we have seen virtual deregulation in the air industry, a new national Transport Act, a new Canada Shipping Act and a new Shipping Conferences Exemption Act.

Bill C-19, the federal act relating to deregulation of interprovincial trucking, was passed in 1987, but it contains little of the promise that it once held. Key to economic reform and opportunity was early acceptance of the entry criteria of "fit, willing and able." A criteria date that was originally promised for 1988 was moved to 1993 or later. In the meantime, a criterion called "reverse onus" will be used. Reverse onus is not perceived by the shipping public to be in keeping with the other progressive economic reforms slated for the transportation industry.

On October 23, 1985, we wrote to the Minister of Transportation and Communications in conjunction with a project under way in the ministry to identify a list of commodities that would meet relaxed regulations for those wishing to enter the trucking field. This list was called Ease of Entry Commodities and would apply in all provincial jurisdictions across Canada. Naturally, we preferred immediate implementation of "fit, willing and able." Nothing came of our request.

On May 15, we again wrote and nothing has happened again. Again, we suggested that all mining commodities should be exempt from entry regulations, as in the case of Manitoba, Nova Scotia, Prince Edward Island and New Brunswick, or at the very least placed on an ease-of-entry list. We were advised to appear before the standing committee on resources development, and we did so on June 15, 1987. We are back, a little more than a year later, singing the same song, so to speak.

We are here to recommend once again that if we cannot have a "fit, willing and able" entry criteria now, our simple recommendation to this committee is to proceed, effective immediately, to exempt all mining commodities, as has been done in other provinces, or at the very least institute ease of entry based on ease-of-entry lists.

In closing, may we say that we in the mining industry require the informed support of the public. We require your support, your understanding and your confidence if we are to continue to make our substantial contribution to the high standard of living we in Ontario currently enjoy.

That is it, Mr. Chairman, although, for clarification I would like to ask a question of you. Perhaps someone else may be able to answer it. We are informed that perhaps under section 7 of Bill 88 mineral commodities are in

fact exempt. That would be found in clause 7(11)(i) of your act. We would just like to clarify, if we could, if in fact that does mean that ores will be exempt.

The Acting Chairman: Perhaps we can get the assistant deputy minister, Ms. Kelch, to respond.

Ms. Kelch: Yes, Mr. Reid, ores and concentrates.

Mr. Reid: Oh, they are in fact exempt?

Ms. Kelch: Yes.

Mr. Reid: We are halfway home then?

Ms. Kelch: That is correct.

Mr. Reid: Exempt from licence, that is?

Ms. Kelch: They will be on an ease-of-entry list, so they will not require a public interest test.

Mr. Reid: But they will still require a licence?

Ms. Kelch: Correct.

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Mr. Pouliot: We welcome the submission of the Ontario Mining Association. They have been very successful in terms of recognition. Mr. Reid, with the highest of respect, you must be beginning to think that Santa not only exists but arrives almost every day. In the past very short while, the clients you represent have benefited from record prices for their minerals in terms of spot, commodities and futures markets. You have also experienced a "windfall" in terms of the Progressive Conservative acquiescence on the need to provide further incentives by introducing flow-through shares. I also believe there has been an extension to that windfall.

It was not too long ago that the new government in 1985, with the help of the third party, which helped reverse 32 years of consecutive Progressive Conservative governments, saw fit to decrease the level of taxation for large mining corporations from a rate of 30 per cent to 20 per cent. You have been able through the years to make arrangements of convenience relating to the Ministry of the Environment, where you would say "understanding," while others would say "tolerance," was the order of the day. You can see now the position you have occupied for so many years; you must relate to the feeling of being under siege. "These people will never stop."

I would have liked to see in your brief the opportunity to really spell out more incentives, such as the safety factor that benefits a lot of us. I know you have to import, through the trucking system, a lot of chemicals to process your minerals. Once you go from the rock to a concentrate, there are certain processes. I am not going to bore you with a list of 15 or 20 chemicals that are necessary, depending on whether you are in the gold precipitation system where you use large quantities of cyanide or whether you are in base metals and you use anything from sulphur dioxide, some cyanide, promoters and depressors, etc.

Suffice it to say that really an adequate road network, in your presentation, would have gone a long way towards ensuring the safety system, because we are talking about long distances under all kinds of weather conditions and we are talking about remote communities as well, where you do not necessarily have backup equipment at your fingertips or as close as your phone, for instance. I must say that I am somewhat disappointed.

Also lacking is the benefit to the people. I know you are people, too—

Mr. Reid: May I have that in writing?

Mr. Pouliot: No, no. You see yourselves as movers and shakers. We see ourselves as people who have the right to a job; it is not a privilege. You go on to support a position that you do everything for the north. I have some resolutions—I, too, left mine at the office—from the Association of Mining Municipalities of Ontario asking that assessment to municipalities for direct services be improved.

I do not come at you—do not get that impression—with a passion and a vengeance, but I have a question, the first of a series of questions: What effect will the deregulation of trucking have on your long-term contracts with the railroad companies, both CN and CP?

Mr. Reid: Okay. Is that the question?

Mr. Pouliot: Yes.

Mr. Reid: Would you like me to respond to your introductory comments?

Mr. Pouliot: No, no.

Mr. Reid: I just gathered, I know my friend from Lake Nipigon is not really an evangelist. He declaimed that himself. But I know he is a great student of the Bible. I know that he knows that the mining industry in Ontario has suffered the biblical seven lean years.

We have had one good year, so far, out of the last eight. Sometimes it gets forgotten that there have been some awfully bad years that the mining industry and the people associated with it have had to suffer. We did not say anything about the road systems. I am sure there are members on all sides who speak constantly about the condition of northern roads, but that was not part of the bill, so we did not.

To get to the question, I cannot answer it directly. Maybe Mr. Johnston can. But I think the trend has been, over the last number of years, that the railroads have been pulling back. You know that they are reducing service. They are abandoning railway lines and the trucking companies have been giving them, frankly, more competition.

They have had to become very cost-conscious one way or the other. The availability of rail is not what it used to be a few years ago. A lot of the technology of the industry has changed. You get smaller quantities and more highly refined products. There has been a trend in the last few years to use trucking more than there has been for rail for a lot of reasons.

As far as long-term contracts are concerned—Lord Keynes said that in the long run, we will all be dead—I am not sure what you mean in terms of one year, five years or 10 years. I am not sure anybody can predict that.

Mr. Pouliot: A few years ago, before the advent of runthrough, the people who worked for the railroad lived in those communities. You are right. Railroads have been in a losing position, a decreasing position, over the years. The slack has been taken up by trucks.

By and large, the people who drive the trucks never lived in the communities. We have some fear in the small communities, certainly in northwestern Ontario, which I am somewhat familiar with, where we are losing the base of an industry. The truckers have never lived in our small communities. Railroaders used to.

With the loss of business, the economic need to run through makes a lot of sense. They can make a good bargain. So we have less and less of a power base. In fact, entire towns were there because the railroads established stations there to move goods to and fro. Hence the concern we have regarding establishing roots in communities, survival of communities and a chance for the people to look to the future sometimes with confidence. Having said that, the truck traffic has more than doubled in our special part of Ontario.

My last question for now is, how much of expenditures or costs of doing business is transportation? Is it four per cent, five per cent or what?

Mr. Johnston: My name is Ken Johnston. I do not think anybody knows the true cost. There are direct and indirects. We people naturally try to make our end of the business appear to be the most important. Some people say as much as 35 per cent of the cost of doing business is the cost of logistics or transportation or whatever you want, because there is a handling element in there.

I do not think we are able to tell you exact transportation costs. But if you are talking about 10 per cent, you would be talking about a great number of dollars. If you are talking about 35 per cent, you are still talking about a great number of dollars. But you are talking about those kinds of numbers.

It could conceivably be up as high as 35 per cent. If you take a look at the cost of handling in your plant, the cost of handling to get the material to your dockside or loading bins and the cost of handling from the mode of transportation you employ into the consumer's hands, it is a considerable amount. You are looking at a lot of dollars that have been spent historically and traditionally probably in the same way for the last one to 100 years. It has to change, and this is one of the opportunities to do that. It is only a small part, but it is one of the things that will help change that way of doing business.

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Mr. Reid: It used to be that 51 per cent of the rail revenue across Canada was due to the mining industry. That includes potash and coal and things like that. It varies. It depends on where you are. If you are producing gold it is taken out in small—they do not need trucks or rail for that. The larger bulk commodities use more.

Mr. Pouliot: You see, from Noranda Mines—for the zinc, be it Senlac or Nova, the zinc producers just send it to the electrolytic plant in Valleyfield. Traditionally it has always been done by rail, there is a good reason, because of volume. I do not know where it would be cheaper to do it by truck.

Mr. Chairman: From where to where? I know you do not want Hansard to miss your words. Would you lean forward, please?

Mr. Pouliot: To send your copper to the refineries, be it in Valleyfield or Copper Cliff, or to have Falconbridge send its ore overseas, I can well understand that it costs a lot of money. What I am interested in is, are you going to benefit a great deal from what you bring in to process, or do you have some intent to change the way you send your product out from rail to trucks, or is it mainly that competition of the marketplace will give you a better rate for the stuff coming in?

Mr. Johnston: I think your question is really three or four questions. All we are seeking is an opportunity for the efficiencies that the available technology we know is out there will allow us. Trucking allows you a fair amount of flexibility. I think it is a pronouncement against what we are doing here. Trucking gives us a fair amount of flexibility. Also, the trucking mode has come a long way in the last 40 to 50 years.

We used to talk about just pick up and delivery in a town at one time. Then we started over the highways after the war and, of course, it was synonymous with better roads and better communications through roads. Now, truckers who used to think it was something great to go 300 miles competitively are looking at 500, 600, or 700 miles competitively. Certainly all the lighter goods move by truck, and probably because of the flexibility.

As far as concentrates coming from Vancouver to Noranda smelter or whatever—I do not know anything about Falconbridge going offshore because I am with Inco—they still move it by rail, and possibly by taking some of these other things away from the railway that are not efficient for them to handle the railways have become more efficient in the long haul business.

Mr. Pouliot: Thank you. Mr. Reid would add that they shall be judged very harshly.

Mr. Reid: I think I am being judged.

Mr. McGuinty: What proportion of your transportation costs would be allocated to rail, ship or truck?

Mr. Reid: We cannot break it down. I was just trying to find some figures today and all we get is global figures, which are not very accurate, frankly.

Mr. McGuinty: Did I understand your colleague to say that it could be as high as 35 per cent of cost of production for some products? Is that the 35 per cent figure you were referring to?

Mr. Johnston: I said the cost of logistics could be anywhere from zero to 35 per cent of the product. I am not saying that is the transportation bill that we identify as such for the goods and services in Canada. The roughest figure that we got came out of Statistics Canada, or out of the ministry or the government here, is somewhere in the order of 55-60 per cent trucking, 40-45 per cent rail in Canada now.

The one thing you must not forget is that huge volumes of bulk goods, like potash, coal, sulphur and grain products, move by rail and probably always will move by rail. So there is a tremendous bulk product market out there that still moves by rail.

Mr. McGuinty: Did you foresee that as an effect of this bill, your truck transportation costs would decrease?

Mr. Johnston: The people I deal with and members of associations I belong to think so. I personally would be happy if they gave us efficiencies of not only economy but also in opportunity to move the goods, but yes, I see opportunities to reduce our prices, and it is not just the cost of moving the goods, it is the flexibility that the trucking mode offers, plus the fact that you let some of these people loose in the marketplace and they do have good ideas. The trucking people have good ideas.

Mr. Chairman: Any other questions or comments? If not, Mr. Reid, Mr. Johnston, thank you for coming before the committee today.

Interjection.

Mr. Reid: You should have seen me 2,000 years ago.

Mr. Chairman: What was your role?

Miss Roberts: A Roman soldier.

Mr. Chairman: Boy, what a place.

Our next witness is from United Westburne Inc., George White, general manager. Mr. White, welcome to the committee. Members have been distributed a copy of your brief.

UNITED WESTBURNE INC..

Mr. White: I guess the legislation has been under way for so long and I have been either here or with ministry people for so many years now, I think I started when I was a teenager.

However, just a little background: United Westburne Inc. is Canada's largest distributor of electrical, plumbing, heating and air-conditioning products. During the past 25 years, our Canadian sales have increased from approximately \$1 million to over \$2 billion this year. We employ more than 5,000 personnel throughout Canada.

In Ontario, United Westburne operates 12 divisions with sales in excess of \$600 million. We employ several thousand people within the province and operate 129 warehouses and distribution centres. These facilities are located throughout Ontario with eight in the northwest, 13 in northern Ontario, 18 in eastern Ontario and 90 in southern Ontario. The operating divisions and branch locations are found in appendage 1 of my submission.

The corporation spends tens of millions of dollars annually on transportation in Canada. Many of our major national manufacturing suppliers are located in Ontario, and no doubt a significant portion of their transportation expenditure will be affected by the proposed legislation. Consequently, any changes to transportation legislation in Ontario are of considerable importance to Westburne. Of course, Westburne does not manufacture any product, we only distribute products of others.

Westburne strongly supports the thrust of the proposed legislation but urges some changes that, in our view, will make the legislation even more effective and help wring the inefficiencies out of the transportation system.

First is the fitness/public interest test. It is proposed that for the first five years the fitness test will be supplemented by a public interest test. This public interest test will take the form of public hearing and will be used only when interested parties can demonstrate that the granting of the licence would have significant detrimental effect on the public interest.

It is our view that the five-year hiatus period is the major flaw in the proposed legislation. The trucking industry in the United States has been deregulated since 1980 and savings in the tens of billions of dollars have flowed to the users, thereby making US industry more competitive. Canadian truckers have restructured their operations, based on the US experience, to posture the Canadian industry for the proposed deregulatory changes.

Canada's largest trucking company, Canadian Pacific Express and Transport, in its 1986 annual report stated:

"CP Trucks, in full anticipation of the resulting changes, has implemented programs to position itself to maintain and expand its position as Canada's leading motor carrier. By January 1988, CP Trucks anticipates that motor carrier deregulation will be fully in place in Canada." I guess they are a little off base in their forecast. "Clearly, increased competition within the trucking industry can be expected, with new firms entering various trucking markets, particularly from the United States, and as existing carriers move to expand their coverage.

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"All CP Truck divisions, aware of greater competition ahead, have moved to firmly establish a position of low-cost operator in their respective markets, and at the same time, ensure that they maintain a leading position in providing fully competitive service levels. Each division, organized as separate centres, has independent management, skilled in marketing, operations, financial control and human resources management, attuned to the market niche served, ready, willing and able to meet any competitive challenge."

I think the comments by Karl Wahl, who was then chairman, certainly are similar to those of many of the other major Ontario trucking companies that we have talked with.

This in our view is proof-positive that the progressive trucking companies such as Canadian Pacific Express and Transport have positioned themselves for the new deregulated trucking environment and do not require a further five-year transition period.

CP Truck's net income increased from \$1,333,000 in 1982 to \$6,096,000 in 1986, a 280 per cent increase, which is truly a sign of a healthy trucking company and industry.

Both the government of Ontario and the federal government have retained consultants to forecast the potential impact of replacing the reverse-onus test with a fitness test and the implications of an open border policy for Ontario based carriers. A review of the various consultants' reports indicates that, "Canadian carriers have had more than five years of advanced warning of deregulation. Some have studied the US experience and restructured so as to better prepare themselves for a more competitive market."

In their Report on Trucking and Railroad Deregulation in the United States, Reese H. Taylor, Jr., former chairman of the Interstate Commerce

Commission, and Karl Morell stated, "Because the Canadian trucking industry today is more competitive than the US industry was prior to the 1980 act, it appears highly unlikely that deregulation in Canada will produce the dramatic structural changes in the Canadian trucking industry that have been experienced by US truckers."

In a report to the office of economic regulatory reform of the federal Department of Transport, Adil Cubukgil and Richard M. Soberman stated in their conclusions, "Concerns about the US carrier domination of interprovincial markets are unwarranted."

During the Canadian Council of Motor Transport Administrators meeting in Victoria, British Columbia, May 11 to May 14, 1987, the Canadian Trucking Association stated it was ready to go to the "fit, willing and able" test immediately.

Industry in Ontario requires an efficient and economic transportation system to compete in both domestic and international markets. Corporations such as Westburne are urging an immediate introduction of the "fit, willing and able" entry test. The Canadian Trucking Association has indicated a willingness to proceed immediately to the "fit, willing and able" test. Both government of Ontario and federal government reports are positive about the impact of replacing the reverse-onus test with a fitness test.

Ontario's industry must have an efficient and economic transportation system if our goods are to remain competitive in the domestic and international marketplace. The inefficiencies must be wrung out of our transportation system.

I think the last time I was here we talked about the impact of corporations such as ours that do not manufacture products. We have the ability to source products either offshore, more recently in Mexico, or the US. Because of the deregulated transportation system within the US, it has allowed American goods to become more competitive. In some instances, some of the sole suppliers to our company have been replaced by American competitors because of the lower transportation costs they have been able to produce for us.

To immediately attain the objective of wringing these transportation problems out of our transportation system, Westburne urges the Ontario government to adopt a fitness test as the entry control mechanism at the earliest possible date and not supplement this test with a public interest test for a five-year period. The public interest test is not required and will only result in a reduced level of transportation competition in the marketplace, thereby making Ontario industry less competitive in both the domestic and international marketplace.

It is essential that Ontario's highway legislation be compatible with the federal Motor Vehicle Transport Act, and where possible, with US legislation. Any delays in developing uniform trucking legislation no doubt will result in higher transportation costs to Ontario industry's products, thereby making our goods less competitive in their traditional markets. Once again, Westburne urges Ontario to continue to strive for uniformity in both intraprovincial and extraprovincial transportation legislation.

Safety and enforcement, of course, are a concern to our corporation. The development and implementation of a National Safety Code is long overdue. Westburne commends the Ontario government's contribution to the development of

this legislation and urges its early adoption.

Good legislation such as that which will flow from the National Safety Code will only prove beneficial if it is rigidly and uniformly enforced. It has been reported that Ontario is reducing staff at some weigh-scale operations. Reductions in weigh-scale personnel reduces Ontario's enforcement capability and its commitment to ensuring the safety of vehicles operating over the provincial highways.

Ontario must quickly adopt the National Safety Code. Ontario must also commit the necessary fiscal resources to properly enforce the code.

Since we were here last, we have had some changes in intercorporate trucking. The minimum level of corporate control for purposes of intercorporate trucking was previously set at 90 per cent in Ontario. We note in the proposed legislation that it has been amended to "more than 50 per cent." Westburne applauds the government of Ontario for this progressive action.

With respect to publishing of tariffs, the proposed legislation regarding the publishing of tariffs appears unclear, and more important, redundant. If the government of Ontario has no mechanism or intent to ensure that the publishing of tariff procedure is fully complied with, such proposed legislation becomes redundant.

For more than 20 years, Ontario had rate-filing legislation which was generally not enforced, nor complied with. There was a strong belief in the transportation community that carriers, in the main, charged other than the rates on file, and consequently the rate-filing legislation was meaningless, as it was not enforced. The proposed legislation requiring carriers to publish a tariff of tolls and only charge the published rate is not required under the proposed competitive transportation environment.

In conclusion, I would like to state that Westburne strongly supports the thrust of the proposed legislation. We recommend the following to ensure the new legislation meets the objective of creating a more efficient and economic transportation system that will assist Ontario companies in remaining competitive in the domestic and international marketplace:

The fitness test should not be supplemented by a public interest test. The fitness-only test should become effective at the earliest possible date, but prior to January 1, 1992.

The tariff publishing requirements are redundant and the proposed legislation should be withdrawn.

Sufficient fiscal resources should be committed to ensure the proper enforcement aspects of the safety legislation.

The government of Ontario should continue to strive for uniformity in both intraprovincial and extraprovincial legislation.

In conclusion, we urge the speedy passage of Bill 87 and Bill 88.

Mr. Chairman: We have with us Margaret Kelch, who is the assistant deputy minister to the Minister of Transportation and Communications (Mr. Fulton).

Mr. White, you made a comment about the staff at weigh scales being reduced. You made it sound as though it has been reported but is not necessarily a fact. Do you know anything about that, Ms. Kelch?

Ms. Kelch: No. In fact, yesterday when the minister made his presentation and I did mine, we made the point that we have added to that enforcement staff level to the tune of 32 people across the province.

Mr. White: This had been reported in one of the trucking magazines and we used this during our previous presentation. It was my understanding until today that staffing of the weigh scales is certainly still quite—they close down many areas as often as they are open. We are looking for teeth in the new National Safety Code or Ontario safety code. It can only be complied with, and we have had many discussions of this, if we have the proper enforcement.

Ms. Kelch: If I may, what is important to know in terms of the enforcement strategy in Ontario is that the physical plant of truck inspection stations is not the only way we use to enforce.

Mr. White: We understand that.

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Ms. Kelch: We do have a commitment to a round-the-clock enforcement strategy in the province. This means that at some times individuals will be occupying those truck inspection stations, but for them to be open on a 100 per cent basis means it would alert the trucking industry—all of them are not as compliant as we would like them to be—that there is a circuit route they could then take when those truck inspection stations were open. I would just like to stress that we do have a commitment to round-the-clock enforcement, but it does not always mean a truck inspection station is open.

Mr. White: Certainly, we laud the role Ontario has taken. I have attended a good number of the Canadian Conference of Motor Transport Administrators meetings where the National Safety Code was discussed, from Victoria through to Charlottetown—

Ms. Kelch: And back again.

Mr. White: —and back again, many times over. Of course, if Ontario is committed to enforcement, then we are going to have a very honourable kind of safety code.

Mr. Wiseman: I would like a supplementary on that. I drive back and forth to Toronto here, and on some of the others where there are weigh scales. Is there a set time they are supposed to be open or do truckers get to know that Highway 7 is open for eight hours at such and such a time—"If we stay off that, we can go another route"—and so on? It seems to me, like the gentleman says, they seem to be closed more than they are open.

Mr. Chairman: It is like knowing where a speed trap is.

Mr. Wiseman: Yes. If they are going to be there at a certain time, they could simply avoid that route if they were overloaded or whatever.

Ms. Kelch: Actually, it is the opposite. We do have, obviously, shift schedules so that employees know when those stations are going to be

open, but it is very much on a surprise basis that those truck inspection stations are open. The industry does not know and there is no regularity to them, so it is an ability, when they least expect it, to pull those trucks in for that type of inspection program.

Mr. Wiseman: Are they open, then, for four hours, or for eight hours?

Ms. Kelch: It varies, again for the same reason.

Mr. Wiseman: But would it be safe to say that if there were one in an area, it would be open some part of the night and some part of the day, or every day, or is it just hit and miss?

Ms. Kelch: It is not hit and miss.

Mr. Wiseman: Maybe it would not be open a whole day either.

Ms. Kelch: It is not hit and miss. It is very much a planned activity, but it is not the same number of hours on a given schedule on a regular basis.

Mr. Wiseman: But would they be open at some point in time every day?

Ms. Kelch: No, not necessarily.

Mr. Pouliot: What about Sundays?

Ms. Kelch: Yes, Sundays are certainly in the shift schedule.

Mr. Wiseman: What I am getting at is, how many days would go by without being open? Could there be a series of days?

Ms. Kelch: I guess what is more important is that the individuals, the inspectors and the highway carrier officers who are employed by the ministry, are on enforcement duty all the time. Even though the truck inspection station is not open, they will be in their vehicles, on the road, stopping commercial vehicles for the same types of activities—weight enforcement as well as enforcement of the Public Commercial Vehicles Act and the Public Vehicles Act—and they would be doing that on a regular basis. So if they are not stopping the vehicle at a truck inspection station, chances are they are stopping the vehicle on another road.

Mr. Wiseman: I hate to get into this, but I want to get an answer. Can you tell us that they have to be open at least twice a week, or are there five, six or seven days when I surmise—

Mr. Morin-Strom: What about once a summer?

Mr. Wiseman: —they are not open, period, and we have all that money tied up and nobody manning them, even with the 32 or 34 that you have within the province?

Mr. McGuigan: It is classified.

Mr. Wiseman: No, I do not want to know the times. I just want to know if they are going to be open. I have gone up Highway 7 just out of Perth and I have maybe seen it open once or twice, and I am on that a lot. I have wondered about that. When this gentleman brought it up, I thought, "Gee whiz,

there is someone asking. What are we going to tell him? Hit and miss? They may be there one day and then not there for a week or 10 days?"

Ms. Kelch: I guess the thing I can stress with you is that it is absolutely not hit and miss. You are quite correct that there is an enormous investment in capital infrastructure out there in truck inspection stations, and we are continuing to improve them. They are the best locations in the province from the point of view of weight enforcement because they are built for that purpose.

Yes, they are open many hours, probably a normal shift for an individual, which is 37.5 hours in Ontario for most people who work for the province. I think you would see that there would be that kind of opening of the normal truck inspection stations, but I cannot tell you that they are open an average of two hours a day or four hours a day or eight hours a week.

Mr. Wiseman: Just to get around it, again—I am still not getting an answer; you are a good politician—does that one person who is on Highway 7 have maybe five or six of these checking stations? Could she or he be all over eastern Ontario doing whatever he does when he does not weigh? How thinly are they divided? Are they out on Highway 401? Does he or she have to drive Highway 401 and use the checking station facility there, or maybe jump back over to Perth or down near Ottawa for one, or something like that?

Ms. Kelch: Obviously, each employee who is part of the enforcement staff contingent has a home base. We are divided across the province into regional locations, of which there are five, and a variety of district locations.

Mr. Wiseman: How many would you have in eastern Ontario from Kingston down? How many in the inspection branch?

Ms. Kelch: The number of employees? I do not know. I could find that out for you. I would be pleased to do it and tell you.

Mr. Wiseman: It just seems they are awfully thin.

Mr. Polsinelli: Could I ask it this way? Maybe the answer to the question could be created in the form of how many stations there are in Ontario and the total number of hours of operation for all of the stations. In that way, it would be a simple process of just dividing the number of stations by the total number of hours of operation to find an average for each station.

Mr. Wiseman: I was just wondering about the one—

Ms. Kelch: I am not sure the average would mean very much.

Interjections.

Mr. Wiseman: I was just wondering if the one on Highway 7, and I surmise that used to be the way it was—

Ms. Kelch: Yes.

Mr. Wiseman: —also runs the one from Brockville to Gananoque. That is an hour's drive from there.

Ms. Kelch: The truck inspection stations, because of their design

for the purpose, are obviously the principal method those enforcement officers have of inspecting those vehicles, so they will use them to the maximum amount of their ability, but what they will not do is have it appear as if they are open regular hours so that they are predictable to the trucking industry. I think that is the best way I can answer your question.

Mr. Wiseman: I can see that.

Ms. Kelch: And yes, there are almost 300 enforcement officers in the province, with the 32 I have just indicated have been added, and they are distributed according to the distribution of the commercial vehicle population. Obviously, there will be more working at the truck inspection stations in and around the Metro Toronto area than there would be on the Highway 7 station to which you refer. We are trying to have those people best distributed to deal with the traffic distribution.

If you want to know how many are in your part of the province, I do not have that information with me, but I am more than willing and will be pleased to get it ready for you and we will share it with you in a couple of days.

Mr. Morin-Strom: I think Mr. Wiseman makes a good point, one that would concern us in northern Ontario as well. I guess I will throw out my case. I know that in the Sault Ste. Marie area there is one inspection station, and to my knowledge, it is the only one within several hundred miles. From people who are driving regularly past it, it seems it is open perhaps once a month or maybe twice a month, so I guess I wonder how many inspectors you have across northern Ontario and where they are located. That particular inspection station, though, would only catch the traffic going up north. I guess it would be the one at Elliot Lake that would catch the traffic going to Sudbury and Sault Ste. Marie.

Ms. Kelch: Can I ask you specifically which station you are referring to?

Mr. Morin-Strom: The one on Highway 17 north within the city limits of Sault Ste. Marie.

Ms. Kelch: Of Sault Ste. Marie?

Mr. Chairman: Would it be helpful if Ms. Kelch was to get for us the number of stations in the north—I am thinking of your question vis-à-vis the north—and the total number of hours open in a month?

Mr. Morin-Strom: And perhaps the number of inspectors who are dedicated to enforcement in the north.

Ms. Kelch: Of employees.

Mr. Pouliot: Let's remind ourselves that the Trans-Canada Highway east-west and back is the main thoroughfare. Our riding is the size of West Germany, and too often I have failed to see any station open. I know there is one there near Nipigon, but it is just inadequate.

Mr. Chairman: What is the same as West Germany?

Ms. Kelch: His riding.

Mr. Chairman: His riding; oh.

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Ms. Kelch: I think the important thing to mention, if I may, in terms of the north is that we have just recently—in fact, I think we are almost complete on an update on the truck inspection stations in the north. There was a long period of time during which they were not mechanically able to deal with the size of the vehicles, but we are now able to do that.

Mr. Morin-Strom: I guess Ms. Kelch has given us more questions than presentation directly. She also stated in her earlier comments that we are into a system of round-the-clock enforcement, which really seems to contradict what her presentation was yesterday, when we heard that 20 per cent of the trucks in this province are operating illegally. This raises the question of how many charges are arising from, presumably, the one out of every five trucks you stop that are violating the laws or regulations in some fashion.

Mr. McGuigan: Could I have a supplementary?

Mr. Chairman: We must not forget Mr. White. He has come here to make a presentation.

Mr. Pouliot: Somebody is not doing his job if 20 per cent are living in sin. Let's call it what it is. Somebody is not doing the enforcement. If it is a burden to the legislation, change the bloody thing. Let's not play games.

Interjections.

Mr. Chairman: Let us leave sin out of this and get back to questions. Mr. Morin-Strom, do you have another question?

Mr. Pouliot: You should know better. People on the other side (inaudible). Really. Ask the police.

Miss Roberts: We are not living in sin.

Mr. Chairman: Mr. Pouliot, would you stop heckling your colleague.

Mr. Pouliot: No, Mr. Chairman, I am provoked. With the highest of respect, on a point of privilege, I have seen thousands of people whose lives are in potential jeopardy by virtue and reason of the lack of enforcement of the statutes. People have a right to be concerned. The roads are somewhat unsafe because of a doubling of the truck traffic in the north. I am just voicing my opinions or reasons for which I am elected to represent my constituents.

Mr. Chairman: That is exactly what it is. It is a matter of opinion, not a matter of privilege.

Mr. McGuigan: Mr. Chairman, on this point, I think it should be cleared up.

Mr. Morin-Strom: Can we go on from there to—

Interjection.

Mr. Chairman: Yes, but you were following Mr. Morin-Strom. Is this a separate matter?

Mr. Morin-Strom: I want to ask a question of our guest.

Mr. Chairman: Let's do that.

Mr. Morin-Strom: Mr. White, I want to ask about your operation. You obviously have a very large business. I did not realize you were a \$2-billion firm in terms of your sales per year. Obviously, you are transporting a lot of products. One of the contentions we have heard is that there has been a movement by many industrial firms to go towards operating their own trucking firm, establishing their own in-house trucking firm rather than using for-hire trucking. To what extent have you done that or considered doing that?

Mr. White: Each of the divisions within Westburne operates some of its own equipment, some more so than others. We operate on both an intracity and intercity basis. We also operate extraprovincially. So we have a private trucking operation at the present time.

Mr. Morin-Strom: Has that been growing as a proportion of your transportation? In terms of the amounts of products you are moving, has the amount you are doing yourselves been growing as a proportion?

Mr. White: Yes, it has.

Mr. Morin-Strom: How do you find the cost comparison?

Mr. White: It is a very difficult question to answer on a broad general basis. Costs vary from region to region and location to location. We are interested in two things, service and cost of service. We have a mix of common carrier, contract carrier and our own equipment. We utilize our own equipment where it produces a best total solution for the corporation. If we find common carrier costs get too high in one area, we trade that off against our own costs, and where necessary, put additional equipment on. If in fact the common carrier costs become more competitive, we take equipment out of that market.

Mr. Morin-Strom: Are you a Canadian firm?

Mr. White: Yes.

Mr. Morin-Strom: Any US operations?

Mr. White: We have a small US operation, which is growing.

Mr. Morin-Strom: Do you have any reflections on the differences in the trucking industry between Canada and the United States?

Mr. White: When you say the differences, in what respect?

Mr. Morin-Strom: In respect to the competitiveness particularly and the quality of the service and prices.

Mr. White: My observation is that the deregulation of the US trucking industry in 1980 produced the kind of results that we would like to see in Canada. As the last speaker indicated, it has provided additional options to shippers such as ourselves. The marketplace has become more competitive, both from a cost and a service standpoint. Carriers have become more innovative down there.

What we have found is that in many instances the new legislation in the United States has allowed some US manufacturers to take away some traditional Canadian markets, because the cost of moving product, for example, from Knoxville, Tennessee, into Canada, was decreased with deregulation and it knocked some of the Canadian manufacturers out of the box. Americans were able to capture markets that had historically been Canadian.

With deregulation, we hope in some instances, and certainly I do not think that anyone is in a Never Never Land, that all costs would be reduced. In some instances we see that there are opportunities for lower transportation costs.

Mr. Morin-Strom: The intent of the bill would be to open up competition or the entry to new trucking firms. It not only does that for Canadian interests or for Canadian corporate entities going into the trucking field, but also opens it up wide to American trucking firms coming into the Ontario market without any type of restriction and certainly not under reciprocal arrangements that would be comparable to the kind of access Canadian trucking firms will have into the largest neighbouring states next to Ontario.

You may be aware—I am sure you are aware—that the Ontario Trucking Association has recommended that an amendment be made to the legislation so that the deregulation, while it would still go ahead for Canadian firms, would be restricted to American firms based in states which did not provide the same kind of access to their industry. Could you support the OTA's recommended amendment?

Mr. White: No, I do not think so. I will tell you why. The last time we were here we talked in terms of foreign ownership and concentration. I guess beauty is really in the eyes of the beholder. Twenty five years ago, we had a small Canadian company called Gill Interprovincial that operated between Vancouver and Toronto. They were bought out by Alltrans Express who went on to buy out Overland Western. I guess I can go down my list here and find many companies that they did buy out: Overland Western, Champlain Sept-Iles, Dominion Consolidated, Western Freight Lines. Over the years a small Canadian company was acquired by an Australian company and, all of a sudden, these people are some of the most vocal supporters of: "We have what we want now. Keep everybody else out."

We look at some of the other corporations, Canadian Freightways, who are part of the Consolidated Freightways operation. Our position would be that if people are good corporate citizens, whether it be an American, English or Australian company that wants to come into Ontario, they set up an Ontario operation; they hire Ontario people; they have an Ontario office; they use Ontario equipment; they pay Ontario taxes, etc. That puts them in no worse position than anyone else. The playing field is level. We are talking about intra-Ontario legislation.

As long as the playing field is level, Americans, Australians or anyone else coming in here has no competitive advantage over Ontarians. If I relate that to our own corporation, we were a couple of small guys who started 25 years ago by mortgaging their houses and going out and getting into the plumbing and electrical business. Now, 25 years later, through hard work, innovation, etc., it is a \$2-billion corporation.

We have seen the same thing in trucking. Sam Smith built a very strong Canadian corporation, which is now CP Express Transport of course—it used to

be Smith Transport—but Ontarians do not have to take a back seat to anyone as long as the playing field is even.

1510

Mr. Morin-Strom: What do you say the government should do about the 3,000 jobs that are projected as being lost in Ontario as a result of this?

Mr. White: I have read some of the statistics and I have them here with me. I am not too sure I buy that 3,000 jobs will be lost. If people from the United States are going to come up and set up an intra-Ontario operation, they are going to go out and hire Ontario drivers; they are going to hire Ontario dock personnel; they are going to have an Ontario operation or maybe a transfer from someone who is inefficient today to someone who is more efficient. If these people do not operate more efficiently, they will not stay in business very long. So I do not see losing any jobs; transfer, because somebody becomes more efficient, yes. That is what happened in the US.

Mr. Sterling: I am concerned about the enforcement aspect of this piece of legislation and actually the enforcement ability of the inspectors who are out there now. I do not think there is any problem with the quality of inspector that we have at this time; it is just a matter of the numbers to implement the increasing number of programs that are thrust upon them.

I would like to ask the assistant deputy minister if she could provide me with a chart for the past five years, up to the present time, of the number of enforcement officers dealing with safety of trucks—I am talking not only of the officers at weigh stations but of the other enforcement officers—and the number of programs that have been introduced for these particular safety inspectors to enforce; in other words, whether the workload has increased for each and every one, which I believe it has.

I would also like to know what increase in truck traffic there has been in the last five years and what the budgets of these particular departments that house these individuals has been over the past five years. I would appreciate that by area, because I think there is a significant problem in the Ottawa-Carleton area and eastern Ontario, at least as far as Mr. Wiseman and I are concerned, with regard to safety.

I think it is easy to talk about stations that are open or are not open and that kind of thing, but I would like to have an overall picture of what has happened over the last five years. I want to be certain that if this legislation comes forward, the burden is not just shifted on to an inadequate number of enforcement officers, if that is what we are asking them for.

The PCV Act as it is now set out is impossible to enforce and the task of these individuals is impossible in terms of enforcing that part of the act. But in terms of the safety aspect, I am not certain that we have adequately addressed it even with 32 more officers, at least not in our area. It may be better in other areas of the province.

Mr. Chairman: I assume this is a request to have the information compiled and tabled with the committee.

Mr. Sterling: I would appreciate that.

Mr. Chairman: Is there anything there that is a problem?

Ms. Kelch: I would not describe it so much as a problem. I would perhaps ask a question, though, coming back. We are certainly pleased to provide that kind of information.

One thing that is very important to know is that the safety interest of this ministry, and particularly the minister, went back to Management Board of Cabinet in the spring when we knew that the National Safety Code was going to have to be implemented by this province. We were eager to do that and we did ask very specifically for new funds and new people in order to be able to implement it, and those are the 32 people I referred to earlier.

You also mentioned, Mr. Sterling, that the old PCV Act is probably one of the most complex pieces of legislation that there is to enforce in the province. Certainly the Truck Transportation Act just does not hold a candle to it at all.

There is, though, and there continues to be a very significant commitment on the ministry's part not so much to enforce but to encourage the industry itself to live within the safety rules of the province. I would not want to leave the impression by producing numbers that talk about the level of enforcement staff that that is the only way we actually achieve compliance with the safety rules in the province. There is very much a requirement, I think, that that is a co-operative approach.

Mr. Sterling: Yes, I would just like to see the figures as to exactly what is happening.

Ms. Kelch: And I am pleased to provide those.

Mr. McGuigan: I would like to clear up, and I think the assistant deputy minister can clear this up for us, the allegation by Mr. Pouliot—and I say that kindly, because this has been mentioned before—that 20 per cent of the people out there are illegal.

Mr. Morin-Strom: That is not an allegation; that is a statement from the ministry yesterday, in writing.

Mr. McGuigan: All right, but I want to clear that up, no matter who made it. Does this mean that if you had a regular mix of trucks on the road and you stopped them, you would find that one fifth of them would have absolutely no operating authority and they could be pulled off the road at that moment?

Ms. Kelch: There are a variety of ways to operate outside of the Public Commercial Vehicles Act as it is currently struck but, yes, Mr. Morin-Strom is correct. I used that figure, that we are aware of there being about 20 per cent of the truck population out there that does not have an operating authority according to the current PCV Act requirements.

Mr. McGuigan: Would they make out that they have it through all of these marvellous ways they have of setting up a structure?

Ms. Kelch: We had part of the group that was with the Ontario Trucking Association yesterday. You will recall that Mr. McKevitt from the north indicated that he was competing against what he called pseudo-leasers and, yes, those are the kinds of constructs that are put in place to try to work through the current abyss of PCV Act requirements.

Mr. Chairman: Will these people be automatically legal when these bills go through?

Ms. Kelch: Many will.

Miss Roberts: May I just have a supplementary?

Mr. McGuigan: I just want to finish that. These people would put up a defence that they are meeting the requirements. What I am coming at is that it would not be people who simply buy a truck and go out and start operating for hire.

Ms. Kelch: Some would.

Mr. McGuigan: It would be some of those too.

Ms. Kelch: Some of those, but you are quite right that there are many who establish what appear to be legitimate mechanisms and constructs under which to operate legally when in fact they are not.

Mr. McGuigan: That clears that up. I guess the final point is that this simply reinforces the need to change the act.

Ms. Kelch: Absolutely.

Miss Roberts: What you are saying is that they are operating illegally; not necessarily that they are all operating unsafely.

Ms. Kelch: I am glad you raised that distinction, because there is absolutely no evidence that indicates that those folks who are not operating with an authority according to the current PCV Act requirements are operating unsafely.

Mr. Chairman: Are there any other questions from members?

Miss Roberts: If I might ask a question, what I would like to key in on, Mr. White, is that you say you do not want us to wait the five years.

Mr. White: That is correct.

Miss Roberts: You think our industry is capable of meeting whatever dislocation there might be.

Mr. White: I think the industry has said that.

Miss Roberts: Okay, and that would the trucking industry as well.

Mr. White: Yes.

Miss Roberts: You have heard their comments with respect to denying. Even after you do the public interest hearing, they want the board to be able to deny a licence, not just make it less lucrative. Your position with respect to that is that it is not helpful?

Mr. White: If they are fit, willing and able, they should be able to operate a trucking business as long as they remain fit, willing and able.

Miss Roberts: I note there is one thing you deal with as well, and

that is striving for uniformity throughout Canada, and I assume with the United States as well?

Mr. White: Yes.

1520

Miss Roberts: Have you been working on this with any others?

Mr. White: I should not say I have been working. Some of the associations I have been working with—and I see Steve Radbone over here. The Canadian Conference of Motor Transport Administrators has been working diligently—I said five years; it is more likely 10 years now—to try to get the kind of uniformity that we are looking for in lengths, safety, weights, down the list.

It has been an ongoing program, and I have to say that we have made giant strides—I say "we," meaning the government of Ontario and the interested parties—over the last five or 10 years. There is no doubt that in many areas we are within striking distance of achieving some of the things we set out to do, but not all of them.

Miss Roberts: Are you suggesting what I would call a continental deregulated area?

Mr. White: Let me give you an example. It is a problem with some of the people in British Columbia, who spent perhaps a longer time on some of these areas, that the safety stickers that the Department of Transportation issues in the United States are not satisfactory for a tractor going into BC under some circumstances.

What we are suggesting is that we would have standard safety criteria for a tractor or a trailer operating within Ontario and between Ontario and other areas; drivers' licences the same way, and size and length of weights. I think there have been very substantial strides made within these areas, but in some areas we just have not made the yardage that perhaps we should have made. That should be the objective. I am sure it is—or I believe it is, but I am not absolutely certain at times.

Mr. Sterling: I had not seen that point raised before about the publishing of the tariffs. Whereabouts is that in the act, and which act is it in?

Ms. Kelch: Subsection 18(1) of Bill 88.

Mr. Sterling: Presumably the publishing of tariffs would be there for the protection of the consumer and you representing the consumer group or being a shipper. This would be put in place basically to protect your rights?

Mr. White: I am not aware of any consumer group or shipper group that has supported this type of legislation. The publishing of tariffs really is meaningless unless they mean something. I guess it was 1963 when we had rate filing become part of the law and, as I understand it, there may have been one or two convictions in 25 years for carriers charging other than the public rate. I think someone did some research in this area.

If you are going to publish a tariff, what is the purpose of publishing it if in fact the rates published are not going to be applied? As I understand

it, there is no purpose in having a carrier go to the expense of publishing tariffs and keeping them available at the various offices unless they are meaningful.

As I read the act this morning, there is no necessary compliance. If in fact they do not charge the rates on file, what happens? There is nothing in the act that says that if they do not charge the rates on file, there is any penalty; and if they were not going to charge the rates on file, then you would require the bureaucracy that has been in place elsewhere. So I cannot find any foundation or justification for having that in the legislation.

Mr. Sterling: Could I have the assistant deputy try to answer? I would like to know what the rationale behind it is.

Ms. Kelch: I think this is like so many of the aspects of the bill to which we referred yesterday, that is, it is a compromise. As Mr. White quite rightly articulates, certainly it is not the shipper group that has indicated that this is a requirement. There are other interest groups that feel it is valuable to have this be continued, and the minister felt that this was a reasonable compromise.

Mr. Chairman: Is this to avoid discriminatory pricing?

Ms. Kelch: I think, more important, it is to ensure that the prices are known and that if one would like to know what rates are being charged, they would be available in a public place in order to find that out.

Mr. White: I gave that some thought. I thought it through. It would be the Department of Consumer and Corporate Affairs, but if people are not charging the rates on file, do you have an action? In the discussions we have had with the federal ministry the answer is no. As I understand the existing legislation, there is perhaps a list price, but for a small shipper or for someone going in and looking at a carrier's tariff, that really does not say anything because if in fact he charges some cost other than that, there is no penalty for it.

We would much rather have the marketplace dictate what the rates are. You go out and make an arrangement with a carrier, and whatever that arrangement is, if it is satisfactory to the carrier and satisfactory to yourself, so be it. Somebody may have a better deal, but if you are satisfied that you made a good deal with that particular carrier, then that should be the arrangement which the carrier has with you.

Mr. Sterling: I guess my concern with leaving it in is that it is a form of price fixing, because what you do is you establish in an area the accepted mode of charging and therefore the uninitiated would tend to—

Mr. White: There recently was an action by the federal government on the tariff bureaus whereby the tariff bureaus, which were accused previously of price fixing, agreed to certain restraints as to how they would proceed in future. But I do not think just publishing a tariff and having it available in a carrier's office really means anything to a shipper, and I do not really know what it means to a carrier, except it is an additional expense for him.

Mr. Morin-Strom: On this point, though, it seems to me that a very strong argument can be made in terms of consumer protection. A consumer who wants to use a service should have the right to know what is the standard fee that is being charged by someone who is offering the service. If you go into a

store and a price is on an item, there is an obligation on the person who is selling that product that he will in fact sell you the goods for the price that is stated.

I do not think there is an intention here to prevent the negotiation of a lower price, but it provides the assurance for someone who comes in to purchase the service that there is a stated price and that he should be able to get the service for that price. If he can negotiate a better price, so be it.

Mr. White: Look at what happened in the United States when they went away from rate filing and rate regulation: You ended up with discounts of up to 65 per cent off the list price. Somebody is going to have to explain to me, and I have been in the business a good number of years, what the benefit is of having a list price if somebody is getting 65 per cent off it and you are not aware of it. It is like buying a used car. It is a good deal. You got 30 per cent off, whereas the standard discount is 65 per cent off. It really is not meaningful.

Mr. Chairman: Thank you very much, Mr. White, for appearing before the committee.

Mr. White: Thank you for allowing us to come.

Mr. Chairman: It is good to see you again.

Mr. White: It is my pleasure.

Mr. Chairman: The next presentation is from the Canadian Transport Lawyers' Association. Mr. Madras, welcome to the committee.

CANADIAN TRANSPORT LAWYERS' ASSOCIATION

Mr. Madras: Thank you very much. With me is Robert Warren. I am the Ontario director of the Canadian Transport Lawyers' Association. Mr. Warren is a national officer of the association. We are here together to present jointly the association's brief. If we may, we have allocated the brief as between ourselves for the purposes of presentation. Mr. Warren will commence or lead off, and I will take care of the conclusion.

Mr. Chairman: I should warn you we have two finely trained legal minds on this committee, so be careful.

Mr. Madras: Excellent.

Mr. McGuinty: Would you identify them, Mr. Chairman?

Mr. Wiseman: They both have blue ties.

Mr. Madras: Mine has stripes.

Mr. Warren: I guess we should begin by saying that if the committee has two finely trained legal minds, then you outnumber us 2-0 before we begin.

Miss Roberts: We have no expertise in this particular area.

Mr. Wiseman: But we do have two lawyers—three.

1530

Mr. Warren: The committee members will have now the written brief which the association filed.

The association is a group of lawyers in both Canada and the United States, representing all of the provinces of Canada, who have been together about 10 years, I guess, and who interest themselves in issues of transportation law—not solely, by any means, issues of regulation.

I think it is important to say at the outset that the CTLA does not now take and has never taken a position on whether or not there ought to be regulation of the trucking industry of any kind, whether economic regulation, safety regulation or whatever.

We have recognized for some time that it was the policy of both the federal and various provincial governments to change the rules of regulation, and we have participated with them to try to make that transition as effective as possible.

Mr. Radbone will know, although I think it is before Ms. Kelch's time, that I was a member of the implementation steering committee, which worked for some two years, I suspect perhaps fruitlessly, to implement the recommendations of Responsible Trucking.

Our presentation here today is addressed primarily to the Truck Transportation Act, with a view to analysing it according to three criteria.

The first criterion is whether or not the legislation effectively provides the means of achieving the public policy goals inherent in it. Later in my submission to you, I will refer to the question of a certain ambiguity about what those goals are. That is the first test: Does it efficiently achieve those goals?

The second question is really a technical one. Is the legislation coherent, free from unnecessary complexity and consistent with what we say are current models of administrative law?

The third and in many respects the most important issue is, does the legislation mesh with the federal government? In the light of certain observations which Ms. Kelch and the minister made yesterday about the relationship between the provincial legislation and the federal, I think that is perhaps the most critical.

We refer in our brief to Responsible Trucking. As I think you are aware from Ms. Kelch's remarks yesterday, Responsible Trucking was a consensus agreement, arrived at in or about 1983, on the basic substance of change in regulation. To our knowledge, that is the only complete and coherent statement of the public policy goals which lie behind this legislation. It is our view that the Truck Transportation Act differs very sharply, very sharply indeed, from that consensus agreement.

Again, we hold no brief for the contents of Responsible Trucking, but I think it is important to recognize that there are deviations in several important respects from that document.

Let me deal first with the fitness test. The fitness test is the basic structure of regulation under the new system. The public interest test is an

interim mechanism, but fitness is the basic linchpin.

We have a preliminary observation that the concept of fitness which is articulated in the Truck Transportation Act again differs quite sharply from Responsible Trucking. The notion on which Responsible Trucking was based was of a regulation that tested the capacity of a carrier to serve a particular market. That notion of the capacity of a carrier to serve a market is completely absent from Responsible Trucking. That may be neither here nor there; that was the will of the Legislature. It does have implications, we suggest, for the public interest test.

Our principal concern with the fitness test, however, arises from the observation which Ms. Kelch makes at page 8 of her submission to you yesterday. I do not intend this to be an adversarial submission at all, but on page 8 she points out that the basic threshold entry test is what she calls administrative rather than an adversarial hearing. With great respect to her, that is, if you wish, a comparison of apples and oranges.

If you look at section 6 of the legislation, which is the fitness test, I want to draw your attention to provisions in that section which make it what I would term, and what I think the legal profession would term—Miss Roberts may disagree with me on this—a discretionary test rather than an administrative test.

In other words, the assistant deputy minister or the registrar must bring a measure of personal judgement to bear. First of all, does the conduct of the corporation with respect to the various listed statutes therein afford "reasonable grounds for believing that the business will not be carried on in accordance with the public interest"? What is the weight to be given to the evidence? That has to be considered. Second, there is the notion of what are reasonable grounds for belief. Third, and perhaps most important, there is a notion in section 6 of the public interest test. What is the content of it? That is something which the registrar has to decide.

The importance of all of those observations is that the registrar, who is now by and large under the Highway Traffic Act performing purely administrative functions, becomes a kind of judicial officer and must make a judicial determination. Because of that, it is our view that the office of the registrar has a policymaking function—remember the registrar and the assistant deputy minister are one in our system; they do not need to be, but they are—now performed by the same person who must make an independent judicial determination whether the fitness test criteria apply.

In our view, according to the ordinary notions of administrative law, that is not good sense. Our recommendation is that, absent any other arguments, it is the existing expert, independent regulatory agency, the Ontario Highway Transport Board, that ought to do it. Even if it is not the transport board, it is our view that the assistant deputy minister's office is not an appropriate one, institutionally or otherwise, to make that decision. My friend Mr. Madras will make further observations along that line somewhat later.

The public interest test is regarded, as it was regarded in Responsible Trucking, as an interim regulatory measure, and you have heard language in the last couple of days about its being a transitional phase and so on. The first observation we want to make is about the public interest test, and it gets back to this question of what are the objects of the legislation, why is it being enacted, and does the legislation achieve its purpose?

After a considerable analysis of the provisions of section 10, it is our view that the public interest test will virtually never be applied. It is as close to an impossibility to apply this public interest test as one can find in legislation. We have three reasons for saying that.

First of all, the use of the modifier "significant" means that there has to be, if you wish, an overwhelming indication of likely detriment.

Second, if you look at the structure of the section, and I am thinking particularly of subsection 10(1), in almost all cases it will have to be the public interest in relation to the province as a whole.

Let me give you an example for eastern Ontario. You may have a carrier applying for a licence in eastern Ontario. An objector based there might be able to bring to bear evidence that there would be detriment in that market, but if the application is for the province as a whole that objector must prove significant detriment to the public interest for the entire province, which would be virtually impossible to do for that one sector.

The section does say "the detriment in that market," but the applicant can change what that market is by the simple mechanism of applying for a licence for the province as a whole. He places no greater burden on himself by doing that because he does not have to prove need. Thereby, he does place a much greater burden on the objector.

The third reason for saying it is likely not to be applied is that the objector does not have the foggiest idea of the capacity of the person applying for the licence to provide the service because no information is required in the application. You do not know whether the person is big, tiny, or in between.

The reason for making these observations is, if as a matter of public policy a decision is taken to have this interim transitional period, why have a test that is impossible to apply in most circumstances?

1540

The second area of observation, and perhaps the most contentious, is with respect to the federal government's legislation.

Ms. Kelch, in her brief yesterday, was straightforward, clear and unequivocal in her statement that there is no relationship between the Truck Transportation Act and the Motor Vehicle Transport Act.

On page 15 of her brief she said that this bill "only deals with intra-Ontario licensing.... I would caution committee members not to become preoccupied with 'issues' that are related more to transborder trucking which is regulated through the federal MVTA and therefore outside the purview of the bills before you."

On page 21, with respect to free trade, she said: "Again, this issue is only relevant to transborder traffic; something not affected by the ITA."

I disagree, because it is clear from very nearly 30 years of litigation in the Supreme Court of Canada, among other places, that the guts of the Motor Vehicle Transport Act are supplied by the provincial legislation.

If you do not agree with me, or with other lawyers who practise in

constitutional law, or with the Supreme Court of Canada, then you can agree with Mr. Fulton himself, who argued the very obverse of the position before the Supreme Court of Ontario not six weeks ago. In his argument that he was the provincial transport board, the basis for his argument was the interpretation of the Public Commercial Vehicles Act, because it is that provincial legislation which gives life to the Motor Vehicle Transport Act.

Again, we do not quarrel with the substance of what is going on, but we see no purpose in denying the fact that this legislation will have a very dramatic impact on the regulation of extraprovincial trucking. If we are right in our analysis that the public interest test will be used very rarely, that will be as true for extraprovincial trucking as it is for local trucking, because the MVTA, according to the Supreme Court of Canada's analysis, adopts that test.

I think it is also important when we are talking about the issue of articulating the public policy purpose, when we are talking about this public interest test, to note the effects of the ministry's position before the Divisional Court last March. If it is successful, if the minister is ruled to be the provincial transport board, there will be no public interest test for extraprovincial trucking.

As we note in our brief, it is clear from the Motor Vehicle Transport Act that the authority of the province to hold a hearing with respect to public interest turns on the issue of whether or not the provincial board has the authority under the provincial legislation to hold a hearing, and the minister does not have that authority.

It is our view then that if the minister succeeds before the Divisional Court, there will be no public interest hearing with respect to extraprovincial trucking. That problem is not corrected by TTA. If anything, it enforces the minister's position by diminishing yet further the powers of the transport board.

Let me get back to the basic propositions. If it is the will of the Legislature to have a meaningful public interest test for the interim period—and that is a threshold decision that has to be made and has to be revisited, in our view, in light of the minister's position last month before the Supreme Court—if it is the view of the Legislature that there should be a meaningful public interest test, then in our submission there are some changes that should be made to it.

First, get rid of the word "significant" so that the federal and provincial tests are the same.

Second, give the regulatory agency the flexibility to tailor the test, to shape it, to sculpt it, if you wish, to the interests of a sector of the province, a particular kind of industry rather than the province as a whole.

Third—and it is a view that we disagree with the previous speaker on—in order for the test to be meaningful, there has to be authority both to deny and the authority to impose a broader range of terms and conditions.

Before asking my friend Mr. Madras to proceed with the balance of our brief, I think one final point should be made. If the Legislature decides that it wants a meaningful public interest test and it adopts the mechanism of analysis that we have suggested, we are not returning to the Public Commercial Vehicles Act. The old days of public necessity and convenience and the

burdensome costs and applications and hearings that imposed are gone, and they are gone for good, even if you return to a meaningful public interest test.

What you are doing is making a statement that there is to be some interim measure for a period of five years. If the decision of the Legislature is that there should not be that, it is our view that, rather than have legislation which holds out an opportunity which is not in reality there, the public would be better served if there were no public interest test at all.

Mr. Madras: There are a number of areas I would like to address, the most important of which, in our view, is the placing of several adjudicative functions, under the Truck Transportation Act, with the registrar and not with the Ontario Highway Transport Board. We submit this division is unwarranted and in fact wasteful.

Moreover, we submit that the placing of what are essentially quasi-judicial functions under the Truck Transportation Act with the registrar is contrary to basic administrative law models of decision-making.

We are unaware of any shipper or carrier group that sought this division or any other brief that sought a shift of adjudication from the traditional adjudicator, the transport board, to the registrar. We are also unaware of any background paper or study or government or ministry document that has recommended or explained or justified this, in our view, very unusual and seemingly senseless structure, the division of adjudicative functions.

Under Bill 88, the registrar, who is appointed under the Highway Traffic Act, is now charged with several responsibilities under the TTA. These include: the receipts of the evidence on fitness; the requirement to make a determination as to fitness; and the review of several judgemental matters such as past conduct of the applicant and a determination as to whether a review of that evidence affords reasonable grounds, in her belief, that the transportation service will not be operated in accordance with law and the public interest, a judgemental decision-making factor.

Once the assessment of fitness is made by the registrar, there may be protest. There may be submissions that the assessment was made on the basis of the filing of false evidence. The registrar then is required to determine whether those submissions are frivolous or vexatious and, if not so found, to actually conduct a hearing on the issue of fitness.

Moreover, there is power under section 8 of the legislation for the registrar to issue a so-called temporary authority for a period of up to 12 months, essentially entirely circumventing the fitness provision and the public interest test where the registrar is satisfied that the circumstances warrant it and that it is in the public interest to do so, the exercise of a quasi-judicial function.

All of these are judgemental decisions, and we suggest it is entirely inappropriate for the registrar to be performing these functions, particularly when the Ontario Highway Transport Board, an expert administrative agency established for the purpose of transportation adjudication, continues to exist and is indeed charged with the administration of the public interest test under the Truck Transportation Act.

The board has been in existence since 1955. It took over responsibility as the administrative body adjudicating transportation matters from the Ontario Municipal Board. Its functions were reviewed by two primary public

committees established for the purposes of reviewing Ontario's highway transportation regulation systems.

As far back as 1977 a select committee of the Legislature on highway transportation of goods released a unanimous two-volume report comprising a comprehensive review of all facets of carrier regulation. The report contained recommendations in fact to fortify and expand the functions of the Ontario Highway Transport Board.

Then in 1983 there was Responsible Trucking, to which my friend Mr. Warren referred, a final report of a review committee comprised of representatives of all sectors of Ontario industry affected by transportation regulation—carriers, shippers and labour. Further endorsement was given to the Ontario Highway Transport Board as the appropriate agency to adjudicate in a reregulatory environment and indeed on an expanded function basis, not in a diminished role as contemplated by the Truck Transportation Act.

1550

If I may, it is striking to review the comments of the Responsible Trucking report and juxtapose those as against the piece of legislation we have now. Referring to page 22 and 23 of the Responsible Trucking report: "Board Powers and Process. The use of regulatory instruments (licences and entry tests) in pursuing the objectives and principles outlined in section 1, will require the exercise of good, consistent judgement and discretion. That judgement should be the duty of an expert, independent agency: the Ontario Highway Transport Board.

"Our recommendations are directed towards fairness, objectivity and consistency in trucking regulations. It is essential that the board have the independence, expertise, structure and credibility to pursue these goals effectively. We believe an agency dedicated to transportation is necessary to sustain the confidence of those in the industry."

Furthermore on page 23: "To improve fairness in this process, the board may use its information and knowledge to facilitate the process of renewal, and use its powers to moderate the pace of change in the market to allow participants time to adjust and respond. Along the same line, the board should play a major role in ensuring that new entrants are fit..." That is the administration of the fitness test and it is, "that they know the rules, and have some ability to understand and cope with conditions of the market. The influence of the board should be to inject an element of discipline in the entry process."

We ask the question: why is there this radical departure from the norm of adjudication by an independent expert tribunal? Why is there the departure from the consensus policy directions established by the select committee of the Legislature in 1977 in a public policy direction for the highway transportation of goods? And why is there the departure from Responsible Trucking in 1983?

On another point, with respect to the board's powers, I would note what appears to us, certainly from our perspective, to be seemingly an incredible flaw in the legislation with respect to the powers of the board. The board has no power to deny an application if it finds that the grant of a licence would result in significant detrimental effect on the public interest. This was addressed, I understand, yesterday.

Surely this is essentially the epitome of an anomaly—to establish a legislative structure to identify applications which may be significantly detrimental to the public interest, and then to be unable to deny the issue of a licence for those proposals to implement what has been found to be significantly detrimental to the public interest.

We would note as well, as my friend Mr. Warren commented, that the federal Motor Vehicle Transport Act, 1987, applies to the regulation of extraprovincial trucking on like terms and conditions as intraprovincial carriage. Thus, if the board is unable to deny an application for an intraprovincial service that is found to be likely detrimental to the public interest, so too will the hands of the board be tied on proposals for interprovincial or international carriage.

Please note as well that the current ability of the board to grant a certificate for a licence in terms that are modified from the terms of the application before it, would be gone under the Truck Transportation Act.

This capability to fine-tune an application to result in a licence consistent with its findings as to the public interest would be entirely gone. Thus, if it found merit in part of a proposal but found that another part of the proposal may cause significant detriment to the public interest, the board would not be able to issue a partial grant. It would have no ability to grant in a modified form beyond a fleet restriction. It cannot protect the public interest in a particular geographic area or by particular market or industry segments.

For example, if it identified that in a proposal there would likely be a significant detrimental effect to the market in northern Ontario but not so in central Ontario, the board would be unable to modify the application and grant in part. If it found that a proposal would likely have a significant detriment to the public in terms of the furniture industry for example, but not necessarily with respect to the proposal in so far as it applies to the carriage of auto parts but may be devastating to a furniture industry in northwestern Ontario for example, it would not be able to modify the proposal.

We asked the question, what is the justification for removing the fine-tuning capability from the board and leaving only the very blunt instruments of fleet-size limitation?

A second matter which I would like to address deals with the transfer of shares of a corporation. By combination of subsections 5(3) and section 32, the transfer of shares of a licensee resulting in a change of control of a corporation must be reported, and it will have the effect of cancelling the licence. We presume this is intended to be consistent with the principle that licences ought not to be transferable. Thus, if one cannot convey a licence directly through the conveyance of a licence as an asset, one should not be able to convey the shares of the company and accomplish it indirectly.

We want to bring to your attention that the provision as drafted carries forward a loophole that currently exists under the Public Commercial Vehicles Act regarding the approval of share transfers. That is, neither the Public Commercial Vehicles Act as it now exists, nor the Truck Transportation Act as proposed deals with the transfer of shares of a holding corporation. Rather they deal only with the transfer of shares of the actual licensee. Thus a carrier whose shares are held by a holding corporation or a series of upstream corporations can effectively avoid this provision, for the change of control of a parent corporation will not trigger the cancellation of a licence as held

by the licensee, a separate corporation. Some very significant transactions can occur on that basis. It is a very fundamental and simple way of avoiding the provisions of the legislation. We bring it to your attention.

We also want to bring to your attention some practical problems arising from this provision. Once the shares are transferred, then the licences are cancelled. Presumably we are dealing with businesses that are carrying on business on an ongoing basis. Presumably, the company has to apply for the licences under the new shareholdings, but what is to be done in the interim? How is the company to continue to carry on its business?

While subsection 5(2) allows a six-month continuation of operations for the executor or administrator of the estate of a deceased person, inexplicably no such transition provision is in place for a corporate licensee. There is a practical problem.

A third area I wish to touch on is section 18 of the bill dealing with tariffs. I heard Mr. White address that provision while I was in the audience. Section 18 is an important provision. It purportedly deals with some form of regulation of tariffs. Section 18 provides for the publication of a tariff of tolls and subsection 18(2) provides that one should not be in a position to charge tariffs other than as published.

"Publication" is an undefined term in the act. It apparently is to be defined by way of regulation, but subsection (3) creates some very substantial exceptions to the general principle of publication of tariffs, and I bring that to your attention if I may.

An obvious exception under subsection 18(3) of some critical importance is that the requirement to charge tariffs as published does not exist where there is written evidence of a contract of carriage of a term of less than 14 days. There is no definition as to what written evidence is supposed to be, but I suggest to you that a shipping bill of lading on a shipment basis may constitute written evidence on a per shipment basis. Hence, you have the requirement of a publication of tariffs which need not be charged on an ongoing daily basis.

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Second, in clause 18(3)(b), where there is a contract for a term of not less than six months and there is a provision for an ascertainable maximum quantity of goods to be transported, you need not charge what you are required to publish. And then under clause (c) there is a provision for exception by the board, with no criteria at all established as to what basis that exception is to be granted or denied on.

I suggest to you that you have before you legislation that creates the appearance of a requirement of fairness, i.e. that there be some publication of tariffs, but while there is a requirement to publish, there is not a requirement, in what I suggest could prove to be the vast majority of cases, to charge what you are required to publish.

I question whether or not what is in fact being asked of you is to sanction misleading advertising. You publish one thing, and if it is a naïve consumer, he goes to see what is published and that is it, but if he is a more sophisticated consumer, he knows that if he goes into somebody's office, he might be able to negotiate a deal of some other nature which is not publicly disclosed.

I question then: If the legislation is going to contain such broad exemptions, what is the purpose of the legislation? From my perspective, it seemingly allows a misleading situation to occur with legislative approval.

Last, there is a very convoluted provision in the legislation designed to bring into the legislation a species in the transportation industry called the transportation intermediary. It is at subsection 3(8) of the legislation. The language is extremely convoluted, and I defy somebody to state with clarity exactly what is intended to be regulated by that provision. To me, if I may, a litmus test of proper legislative drafting is that it is readily understandable. If you refer to subsection 3(8), I suggest you are into a quagmire of convoluted qualifying clauses of undefined terms.

The legislation is supposedly regulating or requiring an operating licence for somebody defined as "an intermediary, such as a freight forwarder." There is no definition in the legislation as to what is an intermediary. There is no definition as to what is a freight forwarder. So you have regulated an entirely undefined species referred to by qualification to something else that is undefined. Then you enter into a series of exemptions, and not regulated is an intermediary charging a prearranged fixed fee, with no definition of what is a prearranged fixed fee.

Some intermediaries may charge X number of dollars to arrange for your movement of goods from here to there; others may charge X per cent of cost plus. So if the basic cost is X number of dollars for the transportation of the goods from A to B, they will charge a percentage of that underlying cost. Others will charge a blanket sum, all inclusive.

Who is within that exemption and who is not? It is by no means, in our submission, clear as to who is in fact intended to be regulated.

Then there is a further exemption under subsection 3(9) where the intermediary is arranging the transportation of goods on the highway incidental to its primary business, such as a customs brokerage. Why the reference to a business such as a customs brokerage? What is it about a customs brokerage that the intermediary's business is supposed to be like? What aspect is it supposed to be similar to? Why the qualification there?

It is, once again, a section that is so ambiguous in its terms that, in our submission, it is of little value. We fail to see its point.

Last, I just note a submission in our brief dealing with the provisions in the legislation regarding cancellation and suspension of operating licences. In a nutshell, our concern is that it is a procedure which has provided, for implementation by the registrar, a referral to the board for a recommendation and a decision by the registrar.

Our concern is that you have a structure where the registrar initiates what is essentially a disciplinary proceeding and refers it to the board for a report, and then it goes back to the registrar for a decision. The person initiating the prosecution is the person making the decision, ultimately. You have the prosecutor being the adjudicator, and in our submission, the structure there is fundamentally flawed and of significant difficulty.

A far more preferred structure, if you will, would be one where the registrar initiates and refers it to the board for a decision, but in our view it is fundamentally wrong for the registrar to initiate and then decide. You have the prosecutor being the adjudicator in that structure. We have a problem with that and we identify it for your consideration.

We hope our submissions have been helpful. We hope they have been constructive. We thank you for hearing us and we would be pleased to receive questions.

Mr. Chairman: Thank you. A number of members have indicated an interest.

Mr. Polsinelli: I can see after that presentation from Mr. Madras and Mr. Warren that the fine legal minds are definitely not on this side of the bench but on the other. It was a fairly enjoyable presentation, and I did not quite understand all of it, so it must mean that you were saying something worth while.

Perhaps I can explore a number of the points with you, Mr. Warren, and you can clarify them for me. You referred to section 6 of the legislation and you indicated that section effectively delegated to the registrar certain discretionary powers which you felt were inappropriate. Would you not agree, though, that in many pieces of legislation the province has delegated discretionary authority to registrars, to various officials, and often that discretionary authority is limited or reduced by certain criteria established by the province or, in many cases, by the municipalities? When they delegate, the discretionary authority is reduced or limited by regulations or by various things that the individual has to take into consideration.

Mr. Warren: The quarrel of the association is not with the existence of the discretion. The concern of the association is with the reposing of the discretion in the hands of the registrar.

Let me point out the nature of the discretion that we are talking about. The discretion is one, first of all, to determine what weight is to be given to the convictions under the legislation which is set out in clause 6(4)(a) and to determine whether or not those convictions "afford reasonable grounds for belief that the transportation service will not be operated in accordance with the law and the public interest." The third element of discretion is, what is the content of the public interest?

Mr. Polsinelli: But under section 6, is the registrar not determining the fitness of the applicant, and not the public interest? Is he applying a public interest test or a fitness test?

Mr. Warren: I do not know. The public interest test is not defined here, and I take it to be a different test from the one that is set out in section 10. So you then have an open-ended discretion on the part of the registrar to determine what the public interest test is in the context of a fitness determination.

Again, I return to the point: I recognize that legislation delegating authority must in virtually all cases delegate a measure of discretion to apply what I say are found facts to certain statutory tests. But where the content of those tests is as amorphous as the ones are here, then the issue is, is the person in whom the discretion is reposed the appropriate person?

The difficulty we see is this: The registrar performs a vast array of purely administrative functions, and he is also an adviser to the minister, inevitably. In that capacity he is involved in the formulation of legislation, the formulation of the tests that are to be applied. There then is the problem of the registrar putting on an entirely separate hat, listening to evidence and saying, "In light of the evidence I have heard, I am going to apply this

test in a way that is independent and appears to be independent," to the people who come before him. That is the difficulty we have.

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Mr. Polsinelli: I do not quite agree with your interpretation of it. The interpretation I have of this section is that in fact the registrar is not applying a public interest test, but is applying strictly a fitness test; that is, the fitness of the applicant, irrespective of public interest, to carry on that operation in a safe and proper manner.

I would still suggest that clause 6(4)(b) allows the government, through the Lieutenant Governor in Council and regulation, to further limit that discretion, whatever discretionary authority is there, to a point where it may be quite minimal.

Irrespective of that, however, if an applicant feels oppressed, there is an appeal to the Ontario Licence Suspension Appeal Board. In effect, are you not really saving a step by saying, "Let the registrar decide"? Assuming even that he has certain discretionary powers, then let the registrar decide, and if the applicant feels aggrieved, he can appeal to an impartial body, being the licence suspension appeal board.

Mr. Warren: The first point you make is that this is a fitness test. I agree; it is called a fitness test. But the words "in accordance with the public interest" appear right in the body of the legislation without the benefit of the attempt to circumscribe the content of it that appears in section 10.

There were two points you raised. First of all, with respect to the likelihood of appeal, I think the greater benefit, if you repose this discretionary power in an independent agency, there is both independence and the appearance of independence. That independent body may exercise a very circumscribed discretion. The government may issue such other matters as are prescribed. It is a question of the institutional fitness or appropriateness of the registrar exercising that power.

You raised another point which neither Mr. Madras nor I raised in our submissions: Why the licence suspension appeal board?

Mr. Polsinelli: You referred to the transport board. At some point during your submission, you indicated that any board would really suffice, I believe.

Mr. Warren: In our written submissions, the question is, why that agency?

That point aside, we recognize that there has to be discretion. We think this discretion is very broad; it may be narrowed. The question is, is it appropriate that the registrar, who after all performs a lot of advisory and policymaking functions in the government, be the decision-maker?

Mr. Polsinelli: That is a point that is taken. Let me go on to something else that I did not quite understand, and perhaps you can explain it to me.

In terms of the Motor Vehicle Transport Act, which is federal legislation, the federal government, as you indicate in your submission on page 7, "creates distinct federal standards of fitness, albeit standards to be

applied by a provincial official appointed by the federal government." That is fine.

In terms of determining the public interest—and I am not very familiar with the Motor Vehicle Transport Act—is there an element, first of all, of public interest in that test in terms of obtaining an operating licence from the federal government?

Mr. Warren: There is a public interest test. The intermedium regulatory test is called a public interest test in the federal legislation; it appears in section 8—

Mr. Polsinelli: As I say, I am not familiar with that federal legislation, but I would like to understand this.

In order for one to obtain an extraprovincial licence, one must satisfy the requirements of the Motor Vehicle Transport Act. One of the requirements is a fitness test; the other requirement is a public interest test.

Mr. Warren: No. The structure of it is very much along the lines of the Truck Transportation Act. One applies to the provincial transport board, which makes an assessment of fitness on the basis of federal criteria. If a determination is made that the carrier is fit, then there is a presumption that a licence is to be issued, unless it can be established by an objector that the granting of the licence is likely to be detrimental to the public interest—not significantly detrimental but detrimental to the public interest.

Mr. Polsinelli: Right. Now in terms of assessing that public interest, you indicate that the Motor Vehicle Transport Act refers to the public interest as defined in provincial legislation.

Mr. Warren: It uses the terms "on like terms and conditions" and "in the like manner." The way that has been interpreted since 1954, and the words are identical since 1954—to use the language of the Supreme Court of Canada case—it is the adoption by the federal government of whatever provincial regulation exists at any given time.

The federal government says in effect to the province, in this case, "With respect to everything other than fitness, you decide procedures and the content of the public interest test."

That is the way it has traditionally been interpreted, as I say, all the way to the Supreme Court of Canada. That is the position the minister took before the Supreme Court of Ontario last month.

Mr. Polsinelli: Has that been interpreted as a flowing, changing test, or has it been interpreted as a test that is fixed at a certain point in time, at the time that the federal legislation was passed?

Mr. Warren: If it were to stand on its own—first of all, it has only been in existence for nine months; to my knowledge, there have been—

Mr. Polsinelli: I am sure there must have been other cases where the scenario would have been established as to whether or not this type of test is a fixed test in time as of the time of the federal—

Mr. Warren: I think the answer to your question is no. It is a discretionary test. It is, if you wish, in the eye of the beholder.

The difference is, though, that in our view, the federal test is not left out there to be filled in, if you wish, by the provincial transport board. What happens is, the Truck Transportation Act comes along and says, "This is your public interest test," as it appears in section 10 of the TTA, which is a much narrower and much more difficult test to apply precisely because it is not open-ended.

We take the position that the federal test of public interest is sufficiently flexible that a provincial transport board could, for example, say that the public interest is in relation to this commodity or this area, but you cannot do that effectively in Ontario.

Mr. Polsinelli: There are two questions that concern me and that I am trying to answer in my own mind.

First, do we have different federal standards for each province in this country, because obviously the public interest test would change from province to province?

Second, what happens five years down the line when in Ontario there will be no public interest test? Are we in effect deregulating the obtaining of extraprovincial licences?

Those are the two things that concern me.

Mr. Warren: First of all, in the federal legislation there is a sunset provision, which I think is a five-year sunset provision, so that it is automatically—

Mr. Polsinelli: On the public interest test.

Mr. Warren: On the public interest test. The intention of the federal legislation is that after five years, subject to review, public interest will disappear; it will be fitness only. It is my view that the effect of the Truck Transportation Act is to substantially weaken the public interest test in the interim period.

All of which may be neither here nor there. If the minister succeeds before the Divisional Court, there is no public interest test in Ontario with respect to extraprovincial trucking period; it is gone.

Mr. Polsinelli: That is another factor I was not aware of; in fact, there has been a deregulation along federal lines. Are we not really paralleling the federal legislation in the sense of saying: "Look. Five years down the line we will also no longer have a public interest test"?

If it is the federal intent to deregulate or, as the minister likes to put it, reregulate the industry, are we not really paralleling their intention by saying, "During the five years, this is our transitional public interest test"? The federal government would be accepting our test as an appropriate test for the granting of the extraprovincial licences.

Are we not doing something that really puts us in conformity with the federal legislation?

Mr. Warren: I do not quarrel with you. That is the intention of the federal system: so that each province could decide what was appropriate for the test.

The only reason that I raised the point was to question the assertion by the ministry that the Truck Transportation Act has no impact at all on extraprovincial trucking because that, in my submission, just ain't so; it does have a direct effect.

That may be accepted for the reasons that you have said. It is appropriate that we develop our own local test, which applies to extraprovincial trucking. That is perfectly legitimate. That is why the system was set up in 1954. It is why it was continued in 1987. The question is, what is the appropriate test to apply?

Mr. Polsinelli: Thank you. I think I understand this legislation a little bit better now.

Mr. Pouliot: I only wish I could figure out the ramifications attached to the proposed public interest test.

Under the present system, the criteria of public necessity and convenience must be satisfied before I am granted a licence. Under the proposed amended reverse onus, an objector would have to prove a significant detriment to public necessity and convenience. Having done so, I fail to see in my candid mind any operative clause; nor do I see any compliance clause.

Am I right in assuming—we are certainly not dealing with reverse onus here—that it will become virtually impossible to deny an application?

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Mr. Madras: In fact, there is no provision under the legislation to deny an application, but in our view it will be virtually impossible to invoke the public interest test, as it is structured. The terms of the test are such that for somebody to attempt to invoke it is going to be extremely difficult and may be an extremely expensive process as well.

It may not be a test that can be readily invoked by a small or medium-sized operator, because it may require expert economic evidence dealing with the public interest for the province as a whole with respect to an application about which the objector has very little, if any information. There is no business plan, no understanding of what the applicant is intending to propose. It is going to be extremely difficult in terms of the ability to invoke that test. Its existence may be more of an illusion than a comfort.

Mr. Pouliot: People have to make a living. There are the familiar things, the responsibilities we have to make ends meet and so forth. Sometimes they come back with different coloured hats. But they get appointed to boards and they eventually do okay.

In the real world of trucking, if I wish to be issued a licence, would I be overly simplistic in stating that the public interest test, which will disappear in five years—it will die a natural death—to all intents and purposes is no longer on the books, is insignificant, does not mean anything?

Mr. Warren: Are you asking for an opinion—

Mr. Pouliot: Yes, just an opinion; thank you.

Mr. Warren: —as to whether or not the public interest test, as it is constituted in the Truck Transportation Act—

Mr. Pouliot: That is right; the proposed coming legislation.

Mr. Warren: The proposal, in our interpretation of it, does not constitute any continuing meaningful regulatory control at all. We say in our written submissions that it might as well not be there.

Mr. Chairman: It was not a hard compromise for the ministry to make.

Mr. Pouliot: That is right.

Miss Roberts: This is a short supplementary on what Mr. Pouliot has just indicated. Your advice is that we take out the public interest test immediately and not wait for five years. We are sort of disillusioning ourselves. Would that not be what you are saying?

Mr. Warren: What we do is specifically predicate our recommendation on the issue of what is the will of the Legislature. If the will of the Legislature is that there be a meaningful public interest test, we submit this is not the case. The Legislature would be better off saying clearly and unequivocally, "There should be no public interest test."

Miss Roberts: Therefore, it is complete deregulation now. That would appear to be what we are attempting to do, to deregulate now, but to soften the blow on some people who have had a public interest test for a number of years. Is that not what you are saying? If it is our will to deregulate, then we should forget the public interest test that we put up, that it is not worth our while, because we have deregulated and it just muddies the waters?

Mr. Warren: I think that is the inevitable result of our analysis.

Mr. Morin-Strom: It seems to me that we have here a list of very significant recommendations on amendments to the Truck Transportation Act. I do not have the expertise to analyse the kinds of details and arguments we have all have, but it seems to me the Ministry of Transportation does.

I think the committee should ask the ministry to respond to each of these recommendations as to whether it is going to accept these amendments. If it is not, then there should be as detailed an explanation as what we have been provided with here, as to why the legal arguments that have been provided to us on these points are incorrect, according to its view, if it is not going to accept these recommendations. I think we have to have a response to the legal arguments from the ministry, on each of them.

Mr. Chairman: Mr. Morin-Strom is asking for the ministry to rebut or at least comment on the suggestions.

Mr. Pouliot: Mr. Chairman, with respect, to establish the legitimacy of the claim.

Mr. Polsinelli: On a point of order, Mr. Chairman: I think that is highly inappropriate. The brief has been presented to the committee. It also has been presented to the ministry and I am sure the ministry will be reviewing it and in turn making its own analysis. But I have served on a number of committees analysing bills and many submissions have been received from lawyers and law firms. I think it would be inappropriate to obtain every

submission that is made, forward it to the ministry that is proposing the bill and ask for a detailed response on the submissions that have been made to this committee. That is our job. We have a researcher here. We can look at the submissions. Anything we are not satisfied with or anything we have concerns about we can question and we can get our experts to respond to, but it is inappropriate to hand it back to the minister and say we want a response.

Mr. Wiseman: I think along the same lines. For us to ask Margaret Kelch to make a decision on these or to comment on them at this time, when maybe she has not seen the submission prior to today, would be wrong. We will be going through clause-by-clause. At that time, we can bring through the proposed amendments you have made here today and it will give the ministry time to answer properly, yes or no, whether it is going to accept them or not, rather than say no today and then find out when she talks to her bosses whether they are prepared to do it or not. Having sat on the other side for a little while as a minister, I would not want my assistant deputy to say yes or no without discussing it between us.

Mr. Chairman: I do not think it is a major debate whether or not we ask the minister to respond to the brief or whether or not a member of the committee simply asks for a response on those individual points. I do not think it really matters which way it is done. The point is that if a member such as Mr. Morin-Strom, asks for that, I think the committee would expect a response from the minister. I do not think it really matters.

Mr. Pouliot: I think quite simply, without bias and prejudice, that it is nevertheless our responsibility to avoid the kinds of pitfalls and shortcomings we went through with the previous Bill 51 dealing with housing—we all know where that led us—or Sunday shopping, for instance. I think, and of course I say this without bias, that we have a responsibility not only to establish the legitimacy, but also to make the bill a better law eventually.

Mr. Chairman: Mr. Polsinelli wants to respond to that.

Mr. Polsinelli: I would like to submit that if the members of the third party feel they are not capable of understanding the recommendations they have—

Mr. Wiseman: Third after the next by-election.

Mr. Polsinelli: The second party; sorry. They have the resources to hire a lawyer and have it explained to them. It think it is unfair for the committee to make that recommendation, that request to the ministry.

Mr. Chairman: Are there any questions to Mr. Madras or Mr. Warren while they are still here? A lot of these issues we are debating right now we can deal with in clause-by-clause.

Mr. Morin-Strom: I want to get back to my point, which everyone else has had a chance to react to without my being able to respond at all. Mr. Wiseman's point was very valid. What I was doing was trying to give the ministry the opportunity to look at these issues. I was not expecting a response now. I wanted them to be prepared to respond, and if they are not prepared to respond to the committee as a whole, I suppose that at this point I am just putting them on notice that I will be asking questions on these ones. I do not expect a response today, but I would ask that the assistant

deputy minister be prepared to have a response when I have my questions on these various points that have been made today.

Mr. Polsinelli: I would say that is totally appropriate.

Mr. Chairman: I agree, Mr. Polsinelli. Are there any other questions of Mr. Madras and Mr. Warren? If not, gentlemen, thank you very much for your appearance before the committee. You can see that you have stimulated some vigorous debate.

Interjections.

Mr. Chairman: That concludes our business for the day. Tomorrow morning we will commence again at 10 a.m. Did you have a point?

Mr. Richmond: Can I just make one comment?

Mr. Chairman: Yes.

Mr. Richmond: Mr. Chairman, in response to the discussion with Mr. Polsinelli and Mr. Morin-Strom, I have indicated to the chairman that I will be preparing a summary, as I have done and as our staff does with most other committees. It will include the transportation lawyers' concerns, as it will contain the concerns of all the other witnesses, related to the best degree possible to the appropriate section of the Truck Transportation Act.

I am sure that when the committee goes through clause-by-clause, it will be able to see all these concerns. I am sure also that in some way the minister or the ministry will respond and indicate, in general terms, which recommendations it may be willing to accede to. The summary will contain these detailed points.

The committee adjourned at 4:32 p.m.

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STANDING COMMITTEE ON RESOURCES DEVELOPMENT

ONTARIO HIGHWAY TRANSPORT BOARD AMENDMENT ACT
TRUCK TRANSPORTATION ACT

THURSDAY, AUGUST 25, 1988

Afternoon Sitting



STANDING COMMITTEE ON RESOURCES DEVELOPMENT

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Substitutions:

Cordiano, Joseph (Lawrence L) for Mr. Miclash

McGuinty, Dalton J. (Ottawa South L) for Ms. Collins

Morin-Strom, Karl E. (Sault Ste. Marie NDP) for Mr. Wildman

Polsinelli, Claudio (Yorkview L) for Mr. Leone

Roberts, Marietta L. D. (Elgin L) for Mr. Miller

Sterling, Norman W. (Carleton PC) for Mrs. Marland

Clerk: Mellor, Lynn

Staff:

Richmond, Jerry M., Research Officer, Legislative Research Service

Witnesses:

From the Ministry of Transportation:

Kelch, Margaret, Acting Deputy Minister and Assistant Deputy Minister, Safety and Regulation

McCombe, C. J., Director, Office of Legal Services

From the Canadian Manufacturers' Association, Ontario Division:

Denholm, Vern, Vice-President

Wilcox, Rob, Chairperson, National Transportation Committee; Assistant Director of Transportation, General Motors of Canada Ltd.

Walker, Jim, Chairperson, Highways Committee; Manager of Transportation, Fiberglas Canada Inc.

Osborn, Charles E., Executive Member; Vice-President and General Manager, Wean Canada Ltd.

Wiersma, Don, Manager of Transportation

From Transport Robert (1973) Ltée and Robert Transport Inc.:

Robert, Claude, President and Chief Executive Officer

From the Canadian Brotherhood of Railway, Transport and General Workers:

Stol, Theo N., Regional Vice-President

AFTERNOON SITTING

The committee resumed at 2:05 p.m. in room 228.

Mr. Chairman: We have with us this afternoon the Canadian Manufacturers' Association, and I believe Mr. Denholm—welcome, Mr. Denholm—is going to introduce his colleagues to the committee and proceed with their brief. Welcome to the committee.

CANADIAN MANUFACTURERS' ASSOCIATION, ONTARIO DIVISION

Mr. Denholm: Thank you very much, Mr. Chairman. I would like to introduce myself, first of all. I am Vern Denholm, vice-president of the Ontario division of the Canadian Manufacturers' Association. I would like to give a little, tiny outline of what CMA is and what CMA does before we start so you can get an idea of the context that we are in.

CMA was founded in 1871 when a small group of manufacturers foresaw the importance of industrial expansion in Ontario. They knew that their domestic markets alone could not provide sufficient opportunity for growth, nor could Canadian industries successfully compete abroad without nurturing at home.

These objectives are the same today as they were in 1871. Today the CMA is a national, bilingual organization with more than 3,000 member companies, two thirds of which are in Ontario. They vary greatly in size and they represent all facets of manufacturing. We are an umbrella organization in manufacturing.

The association plays two vital roles. It monitors domestic and international government policies to create a favourable climate for manufacturing and provides our member companies with extensive information needed to operate effectively in today's highly competitive and rapidly changing environment.

The CMA is a nonpartisan organization and we strive to make a positive contribution to the legislative process both at a federal and provincial level. National, regional and local committees make up our member companies' executive and the executive develops positions and policies on issues that affect and concern manufacturers.

Promoting world trade is also an integral objective of the CMA which provided the impetus for the establishment of the federal government's Canadian trade commissioner service many years ago. Ongoing CMA trade development activities include sponsoring and organizing trade missions, conducting export and import seminars and courses and facilitating international trade and investment agreements.

In addition, our staff specialists help solve problems in such wide-ranging areas as customs and excise, exports, imports, energy, labour relations, health and safety, research development, taxation, workers' compensation, telecommunications and, of course, transportation, which brings us here today.

We serve our members through a head office in Toronto and seven regional divisions with numerous branches. A staff of professionals is headed by a full-time president who reports to an elected 38-member board of directors representative of the industries and regions in Canada. To be eligible for

membership in the Canadian Manufacturers' Association, a company must manufacture in Canada. Member companies range in size from the very small to the very large, but three quarters of our members have fewer than 100 employees.

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The association's income is derived from membership fees, and these are based on the annual sales of the company. Today we are before you representing the Ontario division of the CMA, which makes up about two thirds of our corporate membership and encompasses six branches in Ontario. The Ontario division is governed by a regionally representative executive committee, which reports to our national board of directors.

Having said that, I would like to introduce the people who are here today. To my right is Rob Wilcox, who is the chairman of CMA's national transportation committee, and in his other life, assistant director of transportation for General Motors. Next to him is Charles Osborn, a member of the executive committee of the Ontario division of the CMA, and he is vice-president and general manager of Wean United in Cambridge. Beside him is Jim Walker, who is the chairman of the CMA highways subcommittee and manager of transportation for Fiberglas Canada. Falling off the end of the table over here is Don Wiersma, a CMA staff person who is manager of transportation for the CMA.

I would like to start off by asking Rob to go through our presentation to you this afternoon, and Don has some extraneous facts and figures that he would also like to lay on the table.

Mr. Wilcox: The Ontario division of the Canadian Manufacturers' Association is pleased to have this opportunity, once more, to support the Truck Transportation Act, Bill 88. As members of this committee well know, the CMA believes the debate on this legislation has gone on much too long, at the expense of Ontario manufacturers.

The CMA Ontario division, representing about 75 per cent of Ontario production in manufactured goods, has had a long involvement in the development of this bill, and the proposed legislation represents some compromise by both shippers and carriers. It is now time to implement and enable Ontario manufacturers to benefit from a more efficient transportation system and maintain their competitiveness in domestic and international markets.

Trucking is the dominant mode of transportation in Ontario, as it is for CMA members, since about 65 per cent of manufactured products move by truck and that percentage is on the increase. A deregulated and more efficient transportation industry will contribute to lower delivered costs for manufactured goods, enable these goods to be marketed more competitively and help to maintain existing jobs and develop new jobs for both the manufacturing and trucking industries.

The trucking industry, as well as the manufacturing industry, can be expected to benefit from the proposed free trade agreement. The benefits from a deregulated trucking environment have been well documented in the United States since its implementation in the early 1980s.

At the public hearings held for Bill 150, the earlier format of Bill 88, the CMA opposed three specific areas in the legislation. These were: (1)

public interest test/reverse onus; (2) intercorporate hauling, and (3) single-source leasing.

We are pleased to note that in the present legislation intercorporate hauling has been recognized on an ownership basis of 50 per cent or more rather than the more stringent requirement of 90 per cent.

In the matter of public interest test/reverse onus, the CMA is still principally opposed to this mechanism for granting operating authority. Our earlier expressed concerns about the reverse onus concept have unfortunately already come to pass in the implementation of the new extraprovincial legislation, Bill C-19. However, we acquiesce on this matter in the interest of having uniformity across the provinces and not causing any further delays in the implementation of this legislative package. We also acquiesce in the matter of single-source leasing on the 30-day minimum contract period requirement for similar reasons.

We support the other editorial changes in Bill '88, in particular the clarification in subsection 10(3) dealing with the granting of a limited operating authority when a public hearing has determined that there is a significant effect on the public interest in the market proposed to be served.

With regard to some relevant issues, one raised by the Ontario Trucking Association is that Bill 88 should include a reciprocity provision covering each of the 50 individual states in the US. In practice, that says any US carrier wanting to set up business in Ontario would have to obtain an operating authority under the same rules that would apply when an Ontario-based business would apply for an operating authority in the state where the carrier has its business base of incorporation. Although this suggestion may sound plausible and equitable, the CMA opposes such an amendment to the legislation for the following reasons:

1. Bill 88 is first and foremost a provincial trucking act. Regulations regarding foreign operations, if to be dealt with, would best be part of an extraprovincial regulation like Bill C-19.

2. Reciprocity was never an issue in the development of the legislation in the joint meetings between shippers, carriers and government and was not believed to be an area of concern.

3. Evidence for the fact that Canadian trucking businesses are being denied intrastate operating authorities and are experiencing problems is lacking, to the best of our knowledge. This assessment is supported by the fact that other Canadian provinces have not deemed it necessary to include a reciprocity provision in their intraprovincial legislation.

4. The concept is totally impractical, considering that the matrix on the elements of deregulation for the various states is very diverse and sets up many variations and combinations. Some trucking firms have told us that a reciprocity provision is impractical and unjustified.

5. Extensions of US businesses setting up business in Ontario will employ Canadians, pay taxes in Canada and therefore provide fair competition.

6. We need to be up to date as much as possible now in our legislation and ensure the availability of a transportation system that meets the needs of the manufacturing industry. Opportunities to change legislation such as the Truck Transportation Act come infrequently. Through the Department of External

Affairs and other trade negotiation mechanisms, we need to encourage faster intrastate deregulation.

7. We have been informed by the Ministry of Transportation that the proposed reciprocity provision would be unconstitutional, and we accept that given until proved otherwise.

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In conclusion, the Ontario division of the CMA supports the Truck Transportation Act, as it is beneficial and necessary legislation for the province. It will bring uniformity to the transportation industry in Canada, a significant contribution to the elimination of interprovincial trade barriers. Also, it will position Ontario manufacturers and shippers favourably for the proposed free trade treaty with the United States. We urge the government to move quickly on this legislation, so that the resulting economic gains will flow into the Ontario economy without further delay. That concludes our submission.

Mr. Denholm: I will ask Don Wiersma to add to that and then we will be very glad to entertain questions.

Mr. Wiersma: We make reference in our brief to the US experience and we want to document that a bit better. I know that was a question that was raised in the earlier hearings this week and I am sure the members would be interested to know just where those findings are from.

Of several reports that we have referred to, one was a study by the Conference Board of Canada entitled Distribution Management Transitions: The Canadian Corporate Response to Transportation Deregulation. The second report was on the benefits of deregulation and was written up in Policy Review magazine in the winter of 1986. In these documents, we captioned some of the key points. I would just like to read those into the record.

"Some of the most dramatic savings from deregulation have come in trucking by way of substantial discounts, and truckers have much greater route flexibility for most commodities. In many instances, trucking companies need no longer return from their destinations with empty trailers. No longer must a hauler prove that it will not harm existing firms when it wants to serve a new route.

"New Competitors: The new ICC has authorized 15,000 new carriers over the past five years which are taking full advantage of technologies that are dramatically lowering distribution costs, such as containers that fit on the back of flatbed trucks, fuel-efficient engines and onboard computers. Thanks to these changes, the average shipper's discount in trucking since 1980 has been 20 per cent off tariff, and discounts are frequently as high as 40 per cent.

"Lever Brothers, the giant consumer goods firm, estimates that its shipping costs have declined by 10 per cent in real terms since 1980. The Intermodal Transportation Association estimates that the US economy is saving between \$45 billion and \$50 billion a year in logistics and distribution costs as a result of transportation deregulation as well as improvements in handling inventory."

That is a bit of background to why we believe this has been a very positive experience in the United States. More recently, I took a clipping

from the Globe and Mail, which carried an article in the context of free trade that made reference to the attractiveness for Canadian manufacturers to position themselves in the border states by Canada: New York and all of those other across-the-border states. They give a number of reasons as to why they have found it to be attractive to set up manufacturing facilities. It goes on to say that a chief reason is "Cheaper and easier transportation is a drawing card for the Canadians...."

"Interstate transportation involves less red tape than shipping between Canadian provinces, since transportation deregulation in the United States. And the cost can be considerably lower. He quoted an official of a Canadian chemical company as saying it can ship from Baltimore to the border—about 800 kilometres distance—cheaper than the last 160 kilometres to its home base."

There is a direct quote from a Canadian operation that among other reasons has positioned in the US because transportation costs in Canada were too high. We believe that is some supportive background to the claims we make with respect to the US experience.

Also, I would like to draw your attention to a couple of articles that relate to safety. We know safety has been very much in this debate. As an association of manufacturers, safety in the transportation industry is a high priority for us. We recognize that the trucking industry has a real interest there, but we do too. We cannot have a reliable business if our goods cannot be moved to market in a safe and proper manner.

Again, drawing on US experience, it has been quoted that economic deregulation may bring about poorer safety standards, and there have been some well-documented studies to discount this.

I refer you to two studies. One comes from the Northwestern University Transportation Centre where 300 participants partook in a conference. The upshot of that conference was that there is no correlation between economic deregulation and safety. As was pointed out by the ministry here on Tuesday, safety is a matter of enforcement. It is a matter of seeing the standards are met. The fact that people are perhaps running in a more competitive environment does not substantiate, based on these studies, that they would tend to operate with lower safety standards.

A similar study was reported in California, which was reported in Safety News. It says, "California study shows no strong link between rate control and safety." We would like to table those two very important issues in terms of substantiating our belief that economic deregulation is good.

Mr. Denholm: If there are any questions, we will try to answer them.

Mr. Chairman: There have been several indications of members who want to have a dialogue with you.

Mr. Pouliot: Gentlemen, on page 5 of your presentation you quote as part of your conclusion: "Also it will position Ontario manufacturers and shippers favourably for the proposed free trade treaty with the United States." I take it that your association, the Canadian Manufacturers' Association, is not only an advocate but favours free trade with the United States.

Mr. Denholm: That is correct.

Mr. Wilcox: I wonder if I may add to that. I do not propose to be an expert on the subject of free trade, but the Canadian Manufacturers' Association and my company, General Motors, are on record as being strongly in support of the agreement.

Mr. Pouliot: Do you see trucking deregulation as an important component of free trade?

Mr. Wilcox: Yes. In my view, it is absolutely essential that it is part of a free trade agreement. Speaking for the auto industry and I think most manufacturing concerns in Ontario, the market becomes a highly integrated North American market. Obviously, goods will flow to and from the US. So it is my view that it would be a great benefit.

Mr. Pouliot: The same argument, realistically, could be made for being in favour of free trade, and as a component being in favour of deregulation. It is pretty well the same spirit, the same intent, right?

Mr. Polsinelli: You are discussing Bill C-19?

Mr. Pouliot: We are discussing Bill 88.

Mr. Denholm: I can understand where you are leading us.

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Mr. Wiersma: If I might add to those comments, if you look at it with respect to this bill, Bill 88, within Ontario, I think one of the expected benefits of free trade is investment in Ontario, and for those manufacturers to position themselves here, they will want to have the availability of a transportation service that is efficient, deregulated, within the borders of Ontario. We do not need to necessarily think about crossing the border, and that takes in this other legislation, but in the context of Bill 88, a freed-up transportation system can serve manufacturers better than want to operate in this province.

Mr. Pouliot: One final question, if I may: you mentioned that a reciprocity clause within the confines of the deregulation bill was not arrived at with sister provinces, and you saw fit to seek advice from the Ministry of Transportation and Communications regarding a legal opinion on a reciprocity clause, did you not?

Mr. Wiersma: In our communications with the department, we were informed of its position. We had taken no legal search on this on our own. We have taken that position until proved otherwise.

Mr. Pouliot: Of course, it would be open to other positions on constitutional matters.

Mr. Wiersma: That is what we said. We accept that given until proved otherwise.

Mr. Pouliot: In this case, records will attest that in its wisdom the ministry sought advice, quite naturally so, from the Attorney General (Mr. Scott), and yet the firm of Gowling and Henderson, which is not strange to the milieu of the Attorney General, issued another position. What I am saying is that really, when we are talking about constitutional matters, it is not

unusual to have adverse and differing opinions. I think the analogy or the parallel would have some validity when seeking what our economy is telling us. Are the interest rates going to go up in the year, in the short-term or long-term, or are they going to go down? It is not that easy.

By way of one last supplementary, you have indicated that deregulation would maintain jobs and would create a climate whereby we would have more jobs. Would you care to expand on that?

Mr. Osborn: I would be prepared to say that in my particular business, which is heavy steel manufacturing—we build machinery for steel mills in Canada, and in the world, for that matter—our business is under attack from all over the world. The largest steelmaker in Canada told me as recently as 8:30 this morning that we are likely one of the last in our business in Canada, let alone in Ontario. The price levels from around the world have made our business very, very difficult.

We have attempted to improve productivity in our business and I think the only way you can do that is to have an improved whole environment. It is no use having the best workers and the best machinery in your plant if you have an inadequate transportation system. I feel very strongly that with the efforts we have taken, some help from the government and this trucking deregulation is just another small nail to make that work. I feel very strongly it will save jobs and increase jobs.

Mr. Polsinelli: I would like to thank the gentlemen for their presentation and I would like to say at the outset that unlike some of my colleagues, I do share your optimism that these two bills, actually this package of bills, will improve the trucking industry in Ontario and the benefits ultimately will come to the consumer.

But there is perhaps a logical analysis here that fails me. In your presentation, you indicate that reregulation will help maintain existing jobs and develop new jobs for both the manufacturing and trucking industries. Can you explain to me how you would expect reregulation to add new jobs to the manufacturing industry?

Mr. Wiersma: Transportation is a service to the manufacturing industry. It depends on volume. When we get more plants, we need more transportation; we make more products. From that perspective, as the manufacturing sector grows, the trucking industry can grow along with it. That is the logic.

Mr. Polsinelli: I understand that logic, but the logic I seem to appreciate from your presentation is that as a result of reregulation, you will have more manufacturing.

Mr. Wilcox: I wonder if I might attempt to answer that. If I may, I would like to use the auto industry as an example of the advantages that can be achieved with a trade agreement. General Motors of Canada has benefited greatly since the auto pact of 20 years ago, as have the other North American automotive manufacturers in Ontario. Pre-auto pact days would of course imply fewer people than are employed today.

Let me give you an example: as a result of the trade agreement, the increase of production that has come to Ontario and the benefits to Ontario—I think my numbers are right—have been such that I think last year General Motors of Canada spent \$5 billion in Ontario to companies supplying material

to General Motors. That is a direct result of the increased production we are experiencing in Ontario as a result of a trade agreement.

Eighty per cent of everything we build in this province is shipped into the US market. Without a trade agreement, that would not happen. The benefits are unlimited, and I could expand on that for some time, but my sense is that we will experience unprecedented growth in Ontario. That is the direction we must take.

Mr. McGuigan: My questions to you do not relate directly to your presentation. There are issues that were brought up this morning by another presenter, Mr. Thibodeau of Thibodeau-Finch Express. I think he was very candid in saying that there was a case to be made for some protection for the transport industry.

I do not think anybody has argued so far that the 1928 act was wrong. The argument is that it has outgrown its usefulness and needs to be changed. His argument was that we still need the provisions of the 1928 act in that the transportation industry has no built-in safeguards to save itself. It is subject to raw competition, whereas most of your members have items of protection: patent rights would be one; planned obsolescence would be another; exclusive dealerships would be another. Perhaps I can just expand on that a little bit.

Of course, the high profile one is the automobile industry. As a consumer, if I am shopping for a car, I could go to a General Motors dealership, a Ford dealership and a Chrysler dealership, and price the cars within those dealerships, but I am not going to see the other makes on the same floor because they are exclusive dealerships.

Just a little more expansion on that: suppose I were the wholesale buyer of a company, say it is Ford, and I have priced a comparable model and those vehicles really are comparable within a few dollars and they all have the same features. At one time, when I was more interested in automobiles, I guess I could have told you what they were, but I cannot today. But there are comparable models.

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As a buyer I could say to General Motors, "Your price is \$4,000"—I am going to have to update myself; it is \$29,000 or \$19,000 today—"I just had the Chrysler representative in here yesterday and he offered me the same model, instead of for \$19,000, for \$18,500." My point is that you do not have that type of competition because you have exclusive dealerships, which is a protection for you.

My question really is, do you share any of those same concerns of the people within the transportation industry here in Ontario, that they need some protection to stay alive as a business and that their health is also associated with your health? I wonder who would like to tackle that question. It really goes back to the 1928 deal that I have not heard anybody say was wrong, and whether today we still have some elements of need.

Mr. Wilcox: If I may, I will attempt to answer that in this vein. I think that if carriers are willing to respond, if carriers are willing to go beyond the traditional function of the role of carriers as we knew it several years ago, I do not think they need to be concerned.

As we are aware, the industry is becoming specialized. Shippers, carriers are working together today, developing new methods and new equipment, and are certainly more innovative. We are working with carriers to design equipment, with carriers that are willing to put the resources in place, such as electronic data interchange and electronic transfer of funds, all the things that are taking place in the carrier industry. There are long-term contracts, all the benefits that are there for carriers that are willing to respond and move ahead.

Those carriers, in my view, are going to participate in this great market, this tremendous future Ontario has out there. But I think a carrier that is willing to sit still and not change, and that is afraid of competition, probably will suffer. That is my sense.

Mr. Walker, would you care to comment?

Mr. Walker: Yes, I would. We ship goods right across the country. We have plants located in most provinces. We have a plant in Alberta that supplies the Alberta market and also supplies part of British Columbia, and back into the prairie provinces—Manitoba and Saskatchewan.

In Alberta, we have absolutely no problem in a deregulated market servicing all the areas in the province. We are in the insulation business. We ship to every lumber yard in the province. We get good service. We have no problem getting carriers to service those markets. We did some tracking on costs. We do it by the cost per mile and our costs in Alberta are lower than they are in any other province.

We also ship a lot of production materials across the border. We have Canadian carriers that ship lumber down on flat-deck trucks. They put hoppers underneath the trucks and they bring back dry bulk materials. That would have been unheard of 10 years ago. That truck would have gone down south, delivered its lumber and run all the way back empty, and you pay for that.

This is what we see as a real advantage. The carriers are becoming more flexible.

Mr. McGuigan: Are you concerned, though, that it might not be Ontario companies that survive in this competition?

Mr. Walker: I can comment on that. The companies we do business with are basically Canadian companies because they are giving us the best service, and they seem to be able to compete very well with the American companies. I presume you are alluding to the American companies coming into Ontario. The Canadian companies, I think, are doing very well in the United States. Some are going into the United States and competing on interstate business within the United States and doing very well.

Mr. McGuigan: I am interested in a second question, and that relates to Mr. Weishar of Hyndman Transport, who testified this morning. This is a medium-sized or small-sized company. I think they have 55 rigs, 80 employees. Possibly if anybody has made a case for the truckers, he did, because he developed from livestock trucking, which was necessarily long distances in Canada, to the western provinces. He is in very long-distance trucking.

Incidentally, it brings up a point. You can save a lot of money if you buy your insurance when you go through Saskatchewan. The taxpayers of Saskatchewan are very generous to the rest of Canadians; they are subsidizing

the rest of Canada. That came out, the fact that his trucking company is kind of unique.

Mr. Morin-Strom: Too bad the government of Ontario did not hear him say the last part.

Mr. McGuigan: We appreciate any subsidization they want to give us.

One of the things he pointed out is that there was a great danger of companies moving their whole operations to the United States. It was cheaper to operate in the US, and the service industry—I was not really convinced of the reasons. He did not have reasons but he seemed to think it was cheaper to operate in the United States, move the staff, computers and all that sort of stuff and operate from there.

In your opinion, and some of you are traffic managers, could you do much business with a company operating intra-Ontario whose base is in the United States? Is that practical?

Mr. Wilcox: I think I can speak from experience. We obviously do business with some major US carriers operating in Canada, one or two intraprovincially. Yellow Freight System is an example. We do business with those people as we do with any Ontario-based carrier. They have their branch plant head office, if I may, in Ontario and we deal with those people. They have a staff headquartered in Toronto and also in Windsor. So I do not see any evidence of that thus far.

Mr. McGuigan: Let's say that company, as a hypothetical case, decides to keep operating intra-Ontario, but moves all its facilities across the lake. Do you think they could offer you the services, that you could deal with them in that sort of setting? Or is it too far away?

Mr. Wilcox: Well, that is a hypothetical question, but in today's world of technology and communication, I assume we could deal with them wherever they may be located.

Mr. McGuigan: It would not be too much at arm's length?

Mr. Wilcox: I do not think so. That is my view. Would you comment on that, Mr. Osborn or Mr. Walker?

Mr. Osborn: I think the whole thing comes back on deregulation like anything else. I can remember reading newspapers and hearing stories on the radio about what the free trade in automobiles was going to do back 20 years ago. It has done nothing but help Ontario. Deregulation for trucking, I think, will do the same thing not only to manufacturers but to trucking as well. There is nothing to fear but fear itself.

Mr. Wilcox: I might just add that there are a number of US carriers operating in Ontario today. My company, General Motors, uses those carriers to some extent. Some of the largest US carriers are operating here: Yellow Freight, Roadway Express, CF Aitchison Transport, St. Johnsbury Trucking, Ryder Truck Lines, plus a number of other truckload carriers.

Mr. McGuigan: But those are all resident companies. They are resident companies at the present moment. They pay taxes here.

Mr. Wilcox: Yes, they do. But in spite of the influx of US carriers,

I think Canadian carriers are expanding their operations in the US and doing very well and competing very well.

Mr. Sterling: I would like to thank the Canadian Manufacturers' Association for coming and presenting their brief to us.

I just wanted to ask two questions, basically. One deals with the brief we heard yesterday dealing with the publication of rates and rate schedules; it is contained in section 18 of Bill 88. I would like to know whether you thought it was important for the CMA, where you are principally representing shippers, to have the publication of rates mandatory, or whether the number of exceptions contained in section 18 almost makes it a useless section. It appears to me from what I heard yesterday that it is a regulation which, in effect, is nothing more than show.

Do you have any comment on that at all, or have you considered that issue?

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Mr. Wiersma: We are certainly very pleased to see that the rate filing is out, but the publishing of rates is kind of like having a price list of products or services that you offer. In our view of the bill, we did not find an objection to that and we generally would go along with that. Some of our members probably would not use it much.

I think perhaps smaller members might want to use it more from a point of view of what is the guideline, what is the market price for transportation, recognizing that list price and market price will always be different because they tend to be negotiated. But at least it is a starting point; so from that point of view, it might serve some useful purpose. We have no problem with it.

Mr. Sterling: Just reading subsection 18(2)—maybe I am misreading it—it says:

"(2) No licensee shall charge a toll other than that contained in a tariff that is in effect or impose conditions of carriage that are not contained in or imposed in accordance with the tariff."

I do not know whether that prevents a negotiation of tariff or not. My concern was that I do not mind the publication of rates as long as they are maximum rates and therefore rates that the public can see upon demand, but there seems to be almost a kind of price-fixing contained in the section.

Mr. Denholm: To use Mr. McGuigan's analogy of a car, that car has its list price. What you negotiate with the seller may be different from that, on the basis of other ideas. So I think that, on the basis of our consistent approach, we probably would not favour a clause in the bill that would require no one to sell at any price other than what is published.

If I might touch on some of the other questions too, there was a question on the number of jobs—

Mr. Sterling: Could I just finish mine? Then maybe you can respond to that.

The other issue you raise is the reciprocity issue. While I do not agree or disagree with some of the arguments you may or may not put up, I also am

cognizant of the Ontario Trucking Association wanting some kind of reciprocal clause in the legislation. I am not so certain there is an overwhelming need for such a clause.

But what do you see as the damage done to the competitive nature of trucking in Ontario if such a clause were inserted in the legislation? In other words, do you think it would fatally flaw this piece of legislation? I do not view it that way myself. I view it as more of a comfort than anything else. At least, in other jurisdictions—and I believe there may be 20 or 30 of them in the United States—it would open it to those jurisdictions who had trucking corporations in their particular states to apply here in Ontario.

I guess I am having some problem with your objection. I guess I want to know how strong that objection is to the legislation.

Mr. Wilcox: Don, would you like to answer?

Mr. Wiersma: Yes, I will start. First, the nonconstitutionality of it is not our main reason.

Mr. Sterling: Let's take that out of the argument.

Mr. Wiersma: Practicality is certainly very much a part of it. I have here with me a summary of interstate motor carrier regulations which we just recently got from the Department of Transportation. When we talk about reciprocity in terms of 43 and 7 or 42 and 8, it is a very overstated simplification. If you look at this, all those 42 or 43 have variations within their regulations, whether it be an entry on rate filing, leasing or insurance. So if you are going to do tit for tat, Ontario with Alabama would be one scenario; Ontario with respect to other states another.

The complexity of it, I think, would be horrendous down the road. Just think of the problems the Ontario Highway Transport Board has now with just Ontario regulations. Can you imagine what we would need to keep sorting this out, and as each state changes? There is a very rapid change taken with the United States industry. I think it is just not practical and it is not done in any other business.

Speak to the businessmen here who run operations. Whether it be in insulation, automobiles, shoe-making or what, you just do not approach business that way, to make it tit for tat with respect to standards. I think that is where we are coming from. We do not really think it is an issue because none of the other provinces have identified it as such. Quebec has not, and it is as much in the heartland of manufacturing in North America.

We think it is a theoretical idealism that certainly should not be in this kind of legislation. This is intraprovincial, and that is what we are dealing with. If you want to address that, do it through an external affairs or foreign trade type of thing; do not get bogged down in this bill.

Mr. Sterling: My argument is that it would not bog down anything as far as I can see. If such a clause is inserted into the legislation whereby the minister could regulate what states were in or out, that would be fairly simple.

Mr. Wiersma: Let me bring back to you what is happening on Bill C-19, where we have a simple interpretation of reverse onus by 10 provinces. We are all over the map, 180 degrees, because we cannot agree on an

interpretation of what the public interest means. Now we are going to add to that the complexity of 50 other states. I see it to be very impractical.

Mr. Sterling: I do not understand the complexity. I only understand an American trucker coming in to Ontario and asking for a licence to operate here, so we have to worry about the law here. All we have to worry about here is whether we allow that particular corporation that comes from Alabama to apply. What I see in terms of the sustainable argument by the OTA is that we would say to Alabama, "You are okay because your regulations are roughly similar to ours in terms of allowing an Ontario trucker to go there."

Mr. Wiersma: But, really, the OTA's position to me means that you would have the same depth or degree of regulation for that applicant as he would have in his own state and, therefore, I am saying that there are all these different scenarios. That is the preciseness of their position.

Mr. Sterling: Maybe I do not agree with the preciseness of theirs, but I would like to find something in between.

Mr. McGuigan: I agree with Mr. Wiersma that the theoretical argument is beyond actually the scope of this committee and the act. But since so many people have brought that argument to us, I guess more as a courtesy than anything else, we are trying to deal with it.

Suppose that idea were accepted and we had reciprocity with every state, then we end up the same way as we are with, say, tramp steamers. A steamer registers in Haiti or some place where there are no regulations or wherever it is the cheapest to do that. Would we not end up with the trucking companies all having a post office drop-in? Whatever state in the United States is the most—

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Mr. Wiersma: They would all be registered in Florida or something.

Mr. McGuigan: That would be the practical end result.

Mr. Wiersma: That certainly would be a way to get around it in the province.

Miss Roberts: What my friend is suggesting is that we as a government say we do not like the rules in Alabama and therefore Alabama does not have a right to apply. I think that would be a great constitutional problem. What the OTA is suggesting is directly what you have said, and that is that the Ontario Highway Transport Board use the entry provisions in Alabama to get here into Ontario. That is what they seem to be suggesting and, therefore, that is why their lawyers say that is not so bad. That is where the argument comes in.

Mr. Wilcox: If I may just add to that, we have given this whole question of reciprocity a great deal of thought and we have talked about it among ourselves to some extent. I have to believe the concerns are unwarranted. I have asked carriers to give me an example, just one example of any carrier and in what state it has been denied authority and on what basis. No one has ever been able to give me an example. Canadian carriers operating in the US thus far have done extremely well.

Mr. McGuigan: We asked that question of Mr. Cope and he agreed with you.

Mr. Wilcox: If I may use an analogy which perhaps is unfair, in the federal deregulation bill, the railway deregulation bill, Bill C-18, both Canadian railways were very concerned that if there was not a reciprocity provision in the act their mainline traffic would be lost to US railroads. CN was of the opinion it was going to lose a billion a year revenue. I think CP rail was going to lose \$800,000 a year, if my memory serves me correctly. We have been into the legislation eight months and there is absolutely no evidence of that ever happening or any interest on the part of the US railways to come into Canada. I do not see that happening in trucking to any great extent.

Mr. McGuinty: I just want to comment on one point. This might at first sight appear to be frivolous but I am not sure if it is. On page 2 of your brief, it was stated, "A deregulated and more efficient transportation industry will contribute to lower delivered costs for manufactured goods." How do you know that?

One of the gentlemen referred to talking about this with other truckers in the last few days, the idea of a truck coming back without a load. I guess the rates generally are set to allow for that, but supposing the truck comes back with a load on it? How do you know necessarily that the savings will be passed on to the consumers, so to speak?

Mr. Wilcox: Perhaps I can attempt to answer that. In my company I have been involved with trucking deregulation in the US since the Motor Carriers Act of 1980, the flow of goods, materials, components, unfinished vehicles coming out of the US into Canada and from Ontario flowing into the US market under a deregulated environment. We have experienced tremendous benefits in costs and service. We have experienced the—to use the word again—benefits. We have experienced that. We know it is there. We know the industry has improved. Levels of service have improved. Equipment has improved. So in very general terms, I think it has been a great advantage to us. It has made us more competitive. We have been able to get the costs out of our product because we can reduce our costs.

Mr. McGuinty: Another aspect of your presentation is that, as you know, we get a variety of points of view expressed here, and I agree with my colleague Mr. McGuigan that one of the most moving and compelling statements I have heard about the trucking industry and its problems was one we heard this morning. A relatively small operator, about 40 units, enumerated for us for about an hour, in chapter and verse, the kind of difficulty he encountered in operating in the States.

I find his account very, very difficult to reconcile with your statement on page 4, "Evidence for the fact that Canadian trucking businesses are being denied intrastate operating authorities and are experiencing problems is lacking, to the best of our knowledge." He cited a lot of problems he is encountering.

We can hardly expect the Canadian Manufacturers' Association to come to the defence of the trucking industry, but with respect, I would wonder at the extent of your knowledge. I think it is based on one document you have referred to and one newspaper clipping, which I find not very impressive. I just make that as an observation, I think.

We are all caught up in the advantages of free trade, and I am wondering if perhaps a more sympathetic understanding for the real problems of a fellow Canadian industry—what we are looking for is legislation to ensure not only the availability of a transportation system that meets the needs of the manufacturing industry but, hopefully, also meets the needs of the transportation industry. I guess that is an observation.

Mr. Walker: I would like to comment on that. I had the experience a few years back of supporting a very small carrier who was based in Sarnia, Ontario, where we have a plant, and we are in the export market into the United States, for an operating authority. He had his Interstate Commerce Commission authority. He operated about four units and that was all, but he was domiciled right next to our plant. He was opposed by I do not know how many Canadian carriers and his licence was denied. He already had his US licence, but he could not get the licence to move out of Sarnia into the United States.

Mr. McGuinty: Good example.

Mr. Chairman: Perhaps we could conclude then, Mr. Morin-Strom.

Mr. Morin-Strom: First of all, I thank Mr. McGuinty for his comments as well. I think, Mr. Wilcox, if you talked to some of the people in the trucking industry, you would get the evidence of the difficulties they are having, and in terms of operating licences, the cost. I think we heard a figure just the other day on the order of \$100,000 to get an operating authority in a typical regulated US state. While they may be able to get it, there is a significant cost penalty to getting it which will not be there for the American carriers coming into Ontario.

I know your industry has looked very closely at the free trade agreement and certainly that probably is one of the paramount issues in your mind. I would assume, though, that one of the principles you all agree with, or stand for, is the desire to have a level playing field between the two countries for competing industries. I have a hard time understanding how you can pursue that kind of a trade objective—I take it from the stand you have taken on the free trade agreement you believe you have gotten a relatively fair trade agreement, from the point of view of most of your individual industries in Canada—and then at the same time not have any sympathy at all for the trucking industry's position that a unilateral move by Ontario is one that creates a playing field which is not level at all, which in fact is extremely discriminatory and provides a tremendous advantage of access to the marketplace into Ontario for US truckers in comparison with the difficulty Ontario truckers have in entering the US marketplace.

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I would think that if you were looking at the steel industry and if the steel industry were facing arbitrary discriminatory action against that industry, you would listen to what the steel industry representatives in your association were saying about the effect on their industry, and take a view as to whether a trade relationship in that industry were good or bad generally.

But in the trucking industry, you are not willing to listen to what the trucking industry says the impact is going to be on it. Why are you just not cognizant at all of the trucking industry's position?

Mr. Wiersma: If I can lead off, I think primarily this is an Ontario

bill. We are not insensitive to the needs of the trucking industry, but this is not the place for it to be dealt with. This is primarily an Ontario trucking piece of legislation.

Mr. Morin-Strom: And they are saying it is a bad piece of legislation.

Mr. Wiersma: If you want to improve trade relations, we are saying this is not the mechanism for us to go to work on. In terms of the free trade context, you will recall, with transportation, there was an endeavour to get transportation into the free trade agreement.

The Ontario Trucking Association, I think it should be put on record, did not want to have it in the free trade agreement. There were other transportation sectors that wanted to be in it, but at that time they were concerned about it. Now that they are not in it, they are taking the other position and saying, "We cannot be part of it now." So there is some inconsistency there as well. That is kind of an aside.

We are not insensitive to a viable, healthy trucking industry, but it is one of the few industries that is regulated. That is what we see as being wrong with it.

Mr. Morin-Strom: Yesterday the other point we heard—I am not sure if it was Mr. Wilcox or not—was that he has not heard any objection in terms of this issue of deregulation as it affects anyone, other than from Ontario truckers—not truckers from other provinces.

I would suggest that you should talk to some of the truckers in Quebec. I believe we are going to get the chance with our next speaker. We will hear from a trucker from Quebec. I think it might be interesting. I look forward to that.

Mr. Wilcox: If I may just make one comment, please, in view of your comments. We are very supportive of the trucking industry in Ontario. I think we have demonstrated that.

I think the health of the Ontario trucking industry is due to a large extent to the posture this organization has taken over the years, as well as my own company. We realize our responsibilities and have been supportive. I think the trucking industry would acknowledge that.

Mr. Chairman: Thank you Mr. Wilcox and your colleagues for making your presentation to the committee. We know that the Canadian Manufacturers' Association represents a large variety of enterprises in the province.

Our next presentation is from a gentleman who has been here before, Claude Robert. Bienvenue, Mr. Robert. We are pleased that you are here. Do you have a written brief?

ROBERT TRANSPORT INC.

Mr. Robert: Yes. I have prepared a brief summary of the major points that I felt were very important for me and for my organization. I will skip over the introduction, which I am sure you will have plenty of time to read, and express my feelings and my position on this particular bill.

I want to start by saying that there is no need for a bill at this

stage, but there is probably a need for a slight modification of the present motor vehicles act.

I do believe that deregulation is not going to help our industry. The pre-deregulation period that we have been living through for the past three, four and five years has accomplished what was expected from these various bills, which was more competition to become more effective carriers. I think the pre-deregulation that we have lived through has forced the various boards from various provinces to make it simpler, to make it more accommodating to the shipping world. We are presently in a situation where we have lived through that pre-deregulation situation and the effectiveness is there.

Right now we are questioning, because we are talking about an intra-Ontario deregulation; that is what we are talking about. This means that we hope that, through deregulation of Ontario, we are going to become more effective. It is a matter of becoming more effective in our intra-Ontario movements.

I have listened and I have heard some comments. So far, we have not heard how we will be able to improve today's situation. I feel that Ontario and Quebec are probably the two jurisdictions in North America having the most liberal weight regulations and regulations in terms of type of equipment, dimension and weight. This is where you improve your effectiveness or your efficiency throughout the trucking world. Ontario is already taking advantage of that. Why do we need to deregulate something that is already very effective? And we know that.

We, as carriers—and myself particularly—are very concerned about deregulation and permitting outside carriers to come and pick up freight within Ontario as well as within the province of Quebec. Why is that? It is that the more free trade you have, the more deregulation you have on the federal level and the more international moves you have, the more you interest people in moving from the United States and delivering a load to Cornwall, and his future load is in Detroit. So what kind of load is he going to pick up? A load from a guy who used to use that business as base freight to go from Cornwall to Windsor. So already we have authorized these people, with federal deregulation, to pick up freight to go to the United States. At least we should have enough good common sense to try to protect our intrafreight, because he is going to get away with that. This is why we are concerned.

If this US carrier decides to come into Canada and have his place of residence here, I am not worried about that, because he will have to deal with the same rules as we do. But when he is a US carrier and he has his obligations on the US side, he will get an intra-Ontario licence, will do some carriage from one point intra to another point intra and then will finish up his trip in the United States. So we are going to give him all the advantages that we, as Canadians, do not have.

We do not have them for two reasons. First, we cannot get any intra on the US side. Worse than that, have you ever heard about Canadians having what we call "green cards," being able to move freight? We call that interstate on the United States side. Try to move a load from Alabama to Detroit. It means you have to get a work permit. How do you get work permits on the United States side?

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On the Canadian side, the Americans can do it, and they do not have any

restriction. Why should we let the Americans perform work intra-Canada when we Canadians go on the other side and they put your drivers in jail for much less than that? We have the experience. We have been fighting, through the Canadian Department of Labour and everybody to try to get some rights on that. No way; try to get through the Jones act on the United States side. It is fine for Americans to do that on the Canadian side, but not for Canadians to do it on the US side. I do not understand. We have been making the same representation all over the place. I do not understand, yet people seem to understand. I do not. Maybe we do not speak the same language.

Mr. Pouliot: I know where you are coming from.

Mr. Robert: Another thing. I was listening before, and we have heard comments that in the last three, four or five years, with pre-deregulation, the rates have been decreasing in Canada; also, that the rates have been decreasing between Canada and the United States. If we all agree to say that, yes, there have been savings of 10 or 15 per cent, and we agreed the standard consumer price index includes transportation, with the four per cent inflation and the four per cent increase in finished product, where is that saving on trucking being effected? I am really concerned when people say, yes, it is always for consumers' benefit.

I wonder if it is not what we would call—in physics, when I was a kid and I was still going to school, they were talking about "vases communicants;" I do not know how you would translate that. Anyway, whatever profit is being taken away from one organization is being put into the next one. I think we need to have fair levels of profit-splitting between one organization and the other.

Mr. Chairman: We call it robbing Peter to pay Paul.

Mr. Robert: Yes, that is right.

Mr. McGuigan: What is the other word? The German economic theory. You start with one industry and develop another.

Mr. Robert: Exactly.

Mr. McGuigan: What is the phrase?

Mr. Chairman: Predatory competition.

Mr. McGuigan: Karl will know about that.

Mr. Chairman: It is just one of the many contradictions of capitalism.

Mr. Robert: I see you understand what I am saying. I appreciate it.

This is a brief summary of my general opposition on that first aspect. When we talk about the economics and some geographic differences between Canada and the United States, as you know, I believe the American truckers have a real net advantage over the Canadian truckers because of what I have said before about the rights of working—that is one—but also because of the fact that our economy is situated near our borders, which is very accessible to the American market and truckers; whereas, in our case, what the Canadians are moving on the US side, as you know, are truckloads.

It is very easy for a US carrier to come into Canada with a less-than-truckload shipment and pick up a truckload out of Canada to go to the United States, but it is very difficult for a Canadian to move out to the United States and pick up an LTL load to come back into Canada because we do not have the network on the US side to provide that kind of service. That is why we are very concerned; there must be some difference in the appreciation between the Canadian and American markets.

We are talking about competition. Yes, we need protection. Yes, the Canadian carriers need protection right now. I think our industry is probably at the worst level it has ever been in terms of profits and profitability. You are part of the government. I think it should be easy for you to go and find out about what I am stating here today. You could go and find out what the real profitability of the Canadian trucking industry is. You will see that over the past four or five years a lot of pressure has been put on Canadian truckers and a lot of them have been forced—and I say have been forced—to switch from what I would call company drivers to owner-operators and to other modes of transportation to be able to keep a foot in the marketplace, not to lose their market share.

But we are not talking about the kind of sacrifice they have been forced to make to modify their operations. I have seen a lot of shippers who say, "Oh yes, I have been taking advantage of some savings." But they have been taking the savings on what? They have been taking the savings on jobs and also on revenue that the companies could have enjoyed but they cannot enjoy any more.

I know a lot of people associate deregulation with free trade. Because everybody was for free trade, I think they feel obligated to favour deregulation. I think they are two different animals. We have enough problems with free trade. I do not think we need to add this on.

One thing is certain, with free trade it could be even worse because we will have people moving into Canada with more finished product. That is probably why some people are so concerned, because they really want to take advantage of these US carriers being in Canada, shipping more freight and being able to use intra-Canada movements to balance the carriers going back stateside. If somebody has to do it, why not the Canadian truckers? If ever it goes that far and we need freights to go to the borders, maybe we could use Canadian freight to get that far, to the borders. After that, we will need help from your government to have rights and to be able to get authorities on the US side to be able to move and go and get the product that will finally be destined for the Canadian market.

I do not know what your government will be able to do on that. I know we talked to the Canadian government people and they were amazed to discover a new problem. They never thought about that before. We said, "How will you address this problem?" They did not know what to say. They skate well but they had no specific answers.

Another thing is, when we talk about competition, we want to say that it is much cheaper to operate being a US carrier than being a Canadian carrier. Much could be said about that. I drove into Michigan and Indiana last week. When you see the cost of fuel at 78 cents and 80 cents a gallon, I would like you to make a quick comparison between the amount of taxes being paid per mile per gallon stateside versus what we pay in Canada.

I would also like to address the cost of vehicles. It was fun to hear about the savings for the final consumer. You should do an exercise of buying

a car in Windsor, which is manufactured in Windsor, and buying the same car in Detroit. Your answer would be clear. I have done the test with a small van for one of my employees in Windsor. You would be amazed to see that the difference on a \$15,000 car is \$1,200, including the exchange. That is a good amount of money. Those are the kinds of things we must consider.

The cost of insurance and the cost of vehicles stateside have a tremendous effect. I am surprised that the Canadian industries have not realized that, unless they want to be part of the big US things. I myself just rented 100 trailers a month ago. I had a choice of buying the trailers from Trailmobile and rent them from a Canadian firm or go with Strick Lease. I am sure you know the answer: Strick Lease. There was a savings of \$39 a month going with Strick Lease.

Mr. McGuigan: Who is Strick Lease?

Mr. Robert: It is a US corporation which has been dumping a lot of trailers on the Canadian side. They come up with such attractive rates that we just cannot afford to pass them by. We have to take advantage of that. It is \$30-plus a month. With the sales tax it is \$39 a month, which is very important when you rent 100 pieces of equipment. It is close to a \$200,000-a-year saving. We have to account for these things. When I say a year, it is on the term of the contract, I am sorry.

We have been talking of reciprocity. We are very, very conscious of the need to have reciprocity with the US carriers. The reason we ask for reciprocity is that it is maybe the last thing we can ask for. In reality, what we want to say is, "No, we do not need that bill," but as we have no choice, we have to find some way of protecting ourselves and one way of doing that is to ask for reciprocity, because we know that no government will be able to deliver reciprocity with various states in the United States. By asking for reciprocity, we hope that people will be so conscious of the problems that they may decide to modify this bill entirely and make it different. That is my hope anyway. Maybe other people are not as much a straight shooter as I am, but that is how I feel.

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Another area where we feel there is no reciprocity and that reciprocity should take place is at the taxation level. If you operate stateside, I hope you realize that we have to come up with what we call a franchise tax. We have to come up with a road tax and all kinds of things, whereas the American can get away in coming to our side and there is no provision for similar tax on our side, other than fuel tax. I do not think it is fair. When we want to talk fairness, we should talk reciprocity.

I have been putting on my notes a few other things like capital cost allowance on stateside versus capital cost allowance on the Canadian side. There is a major difference. Another thing we want your government to consider is the possibility to amortize the value of our licence in our financial statement. Stateside, in 1980, once they went for deregulation, all companies have had the possibility of amortizing their goodwill or the cost of their licence into their financial statement.

We do not have that flexibility, so we expect at least that your government, if it adopts a law like this, will give us the benefit to amortize the cost of our licence against future expenses of the company for income tax purposes. That would be an asset that we could depreciate over two or three years. I think this is very important.

Finally, I want to touch briefly on green cards. I want to make sure you all understand the meaning of this. It means the right for Canadian workers to work in US territories, which I do not think we can settle at the level of the provincial government. I know it is a federal issue, but unless it is brought up by your government at the various federal meetings, I do not think we will get anywhere.

Another thing we must also consider, which nobody has ever brought up, is to make a comparison or a parallel between the US carriers and the Canadian carriers. All the major US carriers are all what we call public companies. When we make an analysis of the trucking companies within Ontario, with the exceptions of maybe five or six, all are privately owned companies. There is a tremendous difference between the publicly owned companies and privately owned companies in terms of financial resources. If the trucking companies are being penalized more than they are today in terms of profitability, there is a risk that a lot of companies will go under and go into receivership.

I think your government should be quite concerned about that. When we do a parallel with the US corporations, you should have your own analyst doing research. You will find out that with the 100 largest carriers in the United States—I was looking at some Interstate Commerce Commission report—the debt-equity ratio is 0.2, whereas with Canadian companies the debt-equity ratio is in the neighbourhood of 1.2 to 1.3. It makes a hell of a difference when you have a large debt-equity ratio because you have obligations, you must pay your interest, and you have some financing with the financial institution. If we have to write off the value of our licences from our books, and if we do not get any financial compensation, how the hell are we going to be able to maintain a position in financing with our bankers? That is a very important issue.

If we talk about fitness tests and measuring competence, I think it is a joke. That is all I have to say. Standards of competence, that is a second joke. To finalize, with regard to lack of standard financial reporting in Canada, the only way you can evaluate whether our Canadian corporations are performing well is by having standard reporting forms like the Interstate Commerce Commission in the United States has.

You have to compare financial statements from one company to the next, and you cannot have an absolute idea on this simply because we do not have a standard reporting method in Canada. Before you go through your final analysis, you have to get accountants and economists to try to bring these financial statements to a standard form of reporting, the same as they have in the United States. Then you will be able to evaluate if, yes or no, Canadian trucking companies are too greedy. Then you will soon realize it is not the case.

When we talk about profitability of the trucking industry in the US, we have been talking about multiplication of carriers, yes, but nobody has been talking about how many bankruptcies they have been having. Even today, you see that the profit of the trucking companies in the US went down 50 per cent last year, from 1986 to 1987. Their situation of discounting, as has been mentioned earlier, is slowly and surely going to disappear progressively because of the cost of operation going up.

You cannot expect that costs will decrease 20 per cent a year. There has been a substantial decrease over the past four or five years, and still people are expecting that next year costs of transportation will be still another 10 per cent or 15 per cent lower than this year. We have to be realistic. Sooner

or later, there is no more stretching of the financial statement. Somebody has to realize that we need more revenue to compensate for the increase in the cost of fuel, insurance, salaries and all these things. We cannot stretch any more.

The profitability of the companies is bad, and we need your support to stop that deterioration. One way of doing it is to give back confidence to the carriers by saying, "Yes, we're going to protect some of your equity." Our equity is our goodwill, is our licence.

I was talking with the shippers not too long ago. We have been having these many experiences. The shippers will come right up to you and say, "If your costs of operation are too high, it is probably because you pay too much to your employees, because your administration is bad," because of this or that. But what should we sacrifice? Should we sacrifice our employees' benefits, lay off people, close companies and start with brand-new companies?

I listen to comments and sometimes I wonder. Does it mean that to be competitive in this marketplace, we should spin off our companies and go and get new companies, start up with Rovex instead of Robert, hiring new employees, starting them at low levels, and this on the grounds of saying, "I'm going to be more competitive"? Is this what the shipping world is asking for?

I would be surprised if the same rules would apply in their own companies, whether people would accept very nicely and say: "I should be replaced by a young chap coming from university at \$20,000 a year. Because I have 20 years' experience, I should go." I wonder what would be the reaction of all of these people. I really wonder. I cannot say that to my employees. I am very embarrassed when I have to meet with my employees and ask them for that.

The last issue I want to touch on is safety. We say that safety is a product of financial soundness, because I believe firmly that the only people who can afford to invest in safety are people who have the money to do it. Safety means investment. You have to invest in a better fleet, you have to invest in better garage facilities, you have to invest in better employees. You have to pay them better wages. To have safety you have to invest, but to have investment we need profitability. To have profitability means a solid financial position, and that is not what we are going to get with more deregulation. We feel we do not need that bill at all.

Mr. Pouliot: Mr. Robert, I have renewed pleasure in meeting you as you pay the committee the compliment of another visit. Judging by the size of your operations, although they are family owned and family operated, your time is indeed very valuable.

You have some 1,100 employees and 12 terminal facilities; nine in Quebec and two in Ontario. I am interested: In dollars, how much business do you do a year? You are not a public company, but it is not a secret of the gods, votre chiffre d'affaires?

Mr. Robert: Approximately \$100 million per year.

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Mr. Pouliot: Okay. I got part of it with the help of some of my good friends with the ministry, and when you privilege us by informing us that

there are savings of \$200,000 here or \$200,000 there, pretty soon we will be talking about real money.

You have 1,100 employees, so it would be right to assume that you represent a certain percentage of all trucking companies in both Ontario and Quebec.

Mr. Robert: If you appeal to my feelings, I would say that I am sure I share it with all of them, but some of them are sometimes scared to take a position, or some others would simply not support a philosophy like this, because they have been taking advantage of some situations. But you must realize that in every type of industry—trucking, manufacturing, anything—there are cycles. If you take a company that is at the growth stage, sometimes they will say, "Oh, yes, we are all in favour of deregulation." But it will take only one or two years and they will change their mind, because the same problems will happen.

So we have to be very careful when we take some declarations. When I was studying statistics, we talked about the normal curve. It is always unrepresentative to look at somebody who is at the extremity of the curve; you always have to look at the median. This is where we have to take our opinions from.

Mr. Pouliot: I apologize; I did not express my question properly. We will try again. Mr. Robert, with \$100-million worth of business a year, you are a big player in the Quebec-Ontario market.

Mr. Robert: We are a player, yes.

Mr. Pouliot: Are you four per cent, five per cent? Would I be wrong in saying this?

Mr. Robert: I think I read some figures that trucking is about \$5 billion a year in Canada; I do not know if that figure is right, but I heard a figure like that. So if trucking is \$5 billion and if we are \$100 million out of \$5 billion, so we are probably one out of 50, or two per cent.

Mr. Pouliot: You are a significant player, Mr. Robert. What percentage of your business is done with the United States?

Mr. Robert: I would say about 30 per cent.

Mr. Pouliot: About 30 per cent of your business is done with the US?

Mr. Robert: Out of or into the United States, yes.

Mr. Pouliot: Okay. Hypothetically, assuming—we can suppose everything—that in the years ahead, with deregulation, your business would be roughly 50 per cent in the US and 50 per cent in Canada. That is possible; we do not know what lies ahead. Would you give consideration to moving your base of operations to the US?

Mr. Robert: Whether I would move my base of operations, yes or no; but there is an interest in having your head office in Baltimore, Maryland, for example, for income tax purposes. I tell you, if the Canadian government cannot do anything for us right now—and it is not a threat—we have no choice but to open an operation around New York or Albany, because with the new hours of service, we just cannot legally run into New York and bring back our people into Montreal.

So here we have safety on one side, which is a concern, and on the other hand we have the restriction on the US side on doing US activity. It forces us indirectly and it will force Canadian truckers to transfer work that was in Canada in the past into the US and hire US employees. If people are not considering that, they will be in big trouble. It will be much easier, with the explanation I have given before, to have 100 drivers based in New York, for example, or in the US, and to run a Canadian operation coming into Canada and going back than to have 100 Canadian drivers run from Canada and go to the US. I hope you understand why, because it is a problem of getting your balance properly set up. That is why we already have this handicap dealing with the US. Please let's not add to this handicap any more.

Mr. Pouliot: One last question, then. Could you gaze into a crystal ball, if you are a gambling person, in the short-term future, post-deregulation, right after the bill passes? You are an expert in the field. I mean, you have, I take it, more than stayed alive in what is at present—you have said so, rightly—a very competitive world. How do you see the future of your company unfolding right after deregulation?

Mr. Robert: Just presently it is a major concern. After deregulation it is going to be an addition to this concern, because we ourselves are licensed to operate within Ontario, to come and complement our routes.

As you know, we are Quebec-based carriers who have developed throughout the years and bought a licence in Ontario because we needed to have movement to come and balance our routes going back home and back and forth. If there is a threat and there is some volume being taken away from us as well as from other carriers, to complete this balance it is going to be the reverse effect, as some of the people were saying. It is going to amplify the empty miles; if some of that business is being taken away from us, it is going to be an amplification of some of the problems we already live through. That is why we do not need that situation.

We do not need American drivers coming into Canada getting intra-movement; we do not need that. If the US carriers want to live by the same rules as we do and they want to invest in Canada—I have a terminal in Cornwall and one in Toronto—they will live by the same rules as we do, so they will not have any advantage.

But, believe me, that is not what they are going to do. They want to get the licence. They want to come in and get the load out with their US drivers. This is where they have an advantage, because their operating costs are much cheaper in the US. That is the difference.

I am not worried about an American having a terminal in Toronto and doing intra-Ontario; I am not worried about that. I am worried about US carriers coming into Canada and picking up loads on the way back. This business will be taken away from Ontario drivers, from Ontario people, that is for sure.

Mr. Cordiano: That is not what is contemplated in the act, though. You cannot have an American driver, as I understand it, doing that.

Mr. Robert: Who tells you that you cannot?

Mr. Cordiano: Only on the moves back, if it were on the way back to the US. I may be mistaken here. Correct me if I am wrong. Is that not correct?

Ms. Kelch: You are correct, yes.

Mr. Pouliot: More American drivers.

Mr. Cordiano: You cannot have an American driver pick up a load and drop it at a point in Canada unless that is an incidental move, right?

Ms. Kelch: Unless it is incidental move; that is correct.

Mr. Robert: Yes, but they will all be incidental moves.

Mr. Cordiano: How is that to be determined?

Mr. Robert: That is the thing. That is why we are so concerned about giving open authority to US carriers. How would you manage to check this out? The guy would pick up a load in Cornwall with 2,000 pounds going to Detroit and 38,000 pounds going to Windsor. How can you say it is not part of the return load? It is the same shipper with a dropoff to Windsor, but the dropoff will be 38,000 pounds out of 40,000 pounds.

Mr. Polsinelli: It is a question of enforcement. That is another issue. But, as I understand it, even with the incidental moves, the customs regulations will allow the vehicle to be used, but the immigration regulations will prohibit the American driver from operating that vehicle.

Even in that incidental move, where it is an extraprovincial move, if that incidental move is made within the province, it must be a Canadian driver. If enforcement is the question, that is another issue.

Mr. Robert: If it is different, then why do we need the bill? If we are going to switch from an Ontario driver to another Ontario driver, why do we need the bill?

Mr. Polsinelli: The bill is covering much more than that.

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Mr. Robert: All the bill is doing is opening things up intra-Ontario; that is all the bill is doing.

Mr. Polsinelli: Right.

Mr. Robert: When we are talking intra, all the nice issues about free trade, promoting exchange with outside and all it takes in do not exist any more. The concern and the question should be, should we have more effective systems of competition within Ontario? If that is the issue, the next question should be, is our present system of transport in Ontario effective, yes or no?

Mr. Polsinelli: I did not mean to get into a debate with you on the issues, merely to try to clarify that point about an American driver operating in Ontario. Unless he is making an extraprovincial move, an American driver cannot operate in Ontario. That was basically just to clarify that point, and I think it was brought up in your presentation also.

Mr. Robert: Yes, I realize what you are saying.

Mr. Polsinelli: I am understanding your opinion and thanking you, effectively, for expressing it.

Mr. Robert: Okay.

Mr. McGuigan: Mr. Robert, just for your information, one of your terminals is in my riding.

Mr. Robert: In Windsor?

Mr. McGuigan: Well, it is at Pointe-aux-Roches.

Mr. Robert: Yes, Stoney Point; that is right.

Mr. McGuigan: Stoney Point. I have never visited them, but I have driven past it many days, so I know they are there.

I guess your really biggest concern versus the US is what is termed in the transport language "incidental movement," where a US carrier dropping off something, say, in North Bay—to give a clear case, northern Ontario—could pick up a load on the way back to Buffalo or Niagara Falls, wherever he goes back to the border.

Mr. Robert: That is right.

Mr. McGuigan: That is your really main concern as far as loss of revenues to Ontario or Quebec companies is concerned.

Mr. Robert: Yes, that is one part. I will give you another scenario. A US carrier, for example, who has some kind of penetration into the Canadian market, maybe with one or two Canadian drivers, will be able to secure enough business in Ontario, which will be taken away from the original carriers. The original carriers need these moves to balance our operations to go back to the major centres or to go back to the US and things like this. We need these intra-Ontario movements to create that balance.

Whenever this is taken away from the original carriers, what are we going to haul? It is forcing us to address another marketplace, which may be the US market or the interprovincial market, whereas we have drivers, we have a staff, we have all our people developed to provide that intra-Ontario market. Why do we want to be forced to do those kinds of dealings? We do not need that.

Mr. McGuigan: So the concern is about these people getting a foothold in the market.

The one thing I did not understand on Canadian versus US drivers is that my sort of general understanding is that wage rates in the United States are higher than they are in Canada. There is evidence that the terrific balance of trade we have with the United States is the main reason to try to put on protectionist measures against this, because we are doing very, very well, and one of the reasons is that we have lower wage rates. Do you have evidence that US drivers cost less per hour than Canadian drivers?

Mr. Robert: You have a couple of scenarios. If you are talking about members of the Teamsters' national agreement, those carriers will be the major less-than-truckload carriers. They will have a scale of rates which would probably be higher than the Canadian rates level; I would admit that.

Mr. McGuigan: Flat driver rates, you mean?

Mr. Robert: Driver rates. But when you are trucking the truckload sector, which is a sector I am very concerned with because 90 per cent of our activities is a full-load situation, it is a completely different situation.

As a matter of fact, there was an article about what they call the supercarriers, which are Glengarry Transport Ltd., Ken Snider Cartage Ltd. and all those carriers, and it was proved that the level of salaries of these people is much less than what we currently pay here in Canada to our unionized employees. As well, the benefits and the cost of welfare and all the social benefits attached to it on the Canadian side are much higher than what these truckload carriers would pay their drivers. For example, at our place, our benefits are 34 per cent. These people will be talking, if you read this article on supercarriers, about 22, 23 and 24 per cent fringe benefits. It makes a big difference when you start with the lowest rate.

Certainly as truckload operators, we are very concerned about it, definitely. As well, when I was talking about cheapest cost of operation, a tractor for which we would pay, in Canada, around \$84,000 or \$85,000, they will pay US\$60,000 for in the US. Even though you take into account the 20, 22 or 23 per cent exchange—it depends on the year—we still have a gap of about \$10,000 between a US truck on the US side and the cost on the Canadian side. In addition to this, you have the income tax situation, the insurance situation and the fuel tax situation, which is in no way comparable. In Ontario it is 10 cents a litre, and in the US it is 12 and 15 cents a gallon. There is a tremendous difference between Canada and the United States, state-tax-wise.

Mr. McGuigan: I might point out that we have asked our researcher, because this point has been brought up a number of times—What prompts me to bring it up is that, to the best of my knowledge, we operate in the fuel business in a world market. The United States is buying well over 50 per cent of their fuel from the Middle East, the North Sea, Mexico or wherever, and there is a world market of something like \$14 a barrel, I guess.

Mr. Robert: Yes.

Mr. McGuigan: Canada is self-efficient in total in fuel, yet we move fuel from Alberta down into the United States, and presumably we do that at the world price.

Mr. Robert: Yes.

Mr. McGuigan: It seems to me that that difference which is brought up so often should be in the tax rather than in the basic price of the fuel.

Mr. Robert: That is what it is.

Mr. McGuigan: So we hope to have figures on that.

The other thing that is strange—My riding is Essex and Kent counties and it borders on the city of Chatham, where Navistar International Corp. has its Canadian plant. As you well know, that used to be International Harvester Canada. I think I am correct in saying that they have only one other plant, and that is in Ohio.

Mr. Robert: They have one in Fort Wayne and one in Springfield, Ohio.

Mr. McGuigan: There are three, then.

Mr. Robert: That is right.

Mr. McGuigan: A major part of the Chatham production goes to the United States. Navistar is the biggest truck manufacturer in the business. I do not know what their percentage is, but it is larger than any other truck manufacturer. It puzzles me how that unit made in Chatham could be sold in Montreal via the United States more cheaply than it could be sold from Chatham to Montreal.

Mr. Robert: It is very easy to understand. To start with, we have a 12 per cent or 10 per cent or whatever the federal tax is on some manufactured products. I know that vehicles over a certain amount of weight have some kind of exemptions, but still, when they do the differentials, there is a tremendous difference between these two.

As a matter of fact, we are major carriers for the Chatham plant, moving the parts from the United States into Chatham, so we are very conscious. As you know, they manufacture one model in Chatham, the 9300 series, but the 9300 series represents approximately 15 per cent of the gross sales of Navistar. When you look at the numbers of trucks we use in Canada, we use the S model, the 8300 series, cab-over and all the other types, things like this, and they are all being manufactured on the United States side. As you know, with the auto pact, they had to manufacture a certain number to maintain this balance.

That is what this is all about. They manufacture right now about 53 trucks a day in Chatham. Because the sales are going down now, they are going to reduce it to about 45 or 46 in the next following months. One of the concerns is that after free trade, why are they going to manufacture these trucks? Would it not be worth while to manufacture in the plants where they already manufacture 150 a day, when there is no obligation about the auto pact and things like this? A lot of people, the employees in the Chatham plant, are concerned about these things. What will happen tomorrow?

Mr. McGuigan: I know they are, but certainly there have been a lot of statements from Navistar that the Chatham plant is a very efficient plant and very high quality—

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Mr. Robert: It is the same as Sainte-Thérèse in Montreal, and after 1991, God knows.

Mr. McGuigan: It is a little off our topic.

Mr. Pouliot: There will be no deal. That is the bottom line. We are drifting. With all due respect, we are addressing Bill 88; we are not addressing free trade.

Mr. McGuigan: Anyway, we are pursuing trying to get some hard figures to help us understand those items. On the franchise tax, would you explain what the franchise tax is, and does it apply equally to an American truck working in the United States as to a Canadian truck working in the United States? Would you give us a little background?

Mr. Robert: Yes. You see, franchise tax is like the taxe à la valeur ajoutée in Europe or things like that. In the United States, when you buy a vehicle, it is already included in the cost of the vehicle, whereas they consider that we do not pay that tax. That is a federal tax which is being collected and distributed after that into the various states.

In the past, the states were getting what would be called "péréquations" from the federal government. Now states like New York, Ohio, Indiana and Michigan are starting to collect this tax directly. In the past, they were not able to collect from Canadian carriers. Now, with this method of collecting the money, they come directly to us; and this is based on our gross revenue, which we have to file on the basis of a percentage of mileage. You take your gross revenue, apply the percentage of mileage you go on the United States side and then, after that, they give the equation. For New York state, for example, it amounts, in our case, to about US\$350 to US\$360 a year.

Mr. McGuigan: Per vehicle.

Mr. Robert: Per vehicle. Now Ohio is starting. Ohio's is very minimal, because it has applied a different percentage. Indiana is coming; we expect about US\$150 to US\$160, if they materialize what in the first prereports they have been requesting from us. When you total this up, we figure, for example, that you have to pay \$100 for a sticker per truck to go across US customs. That is a minimum fee that you have to pay every year.

Mr. McGuigan: That is separate from franchise?

Mr. Robert: Oh yes, that is all separate. You take New York state, for example, where, in addition to reciprocity, they charge you 2.7 cents a mile. That is over and above the franchise tax. Once we Canadians operate on the United States side, we pay all these expenses.

Mr. McGuigan: The point I want to nail down is, do they also charge that franchise tax to a US trucker?

Mr. Robert: Yes. For example, for our basic plates we pay about \$2,500, which we prorate through the various provinces, as you know. If we could prorate with the US, then we would have some of the credit back, but we are not allowed to prorate with the US. On the other hand, we still have to pay the road tax over there in New York and other states.

When you do a comparison, there is a tremendous difference between the two. Ontario and Quebec and all the others have signed what we call reciprocity treaties with the various states, so the Americans can come here without having any basic plate, but we cannot go there. Whereas they will pay \$50 or \$100 for their basic plates, we pay \$2,500 a year for that basic plate and we prorate the various provinces in Canada.

Mr. Chairman: Is there anything else, Mr. McGuigan?

Mr. McGuigan: Yes. I want to compliment Mr. Robert on his candidness in saying the reciprocity is a tactic. It is something, I guess, that we have all known, but you are the first person who has said it. It is beyond the scope of this act, really, but nevertheless we will be dealing with it. We think we owe it to you and other people who come here to deal with it.

I asked this question of one of the previous presenters here. Suppose we accept that we get reciprocity, that we bring about a reciprocity law; that is completely beyond our capacity, but in a theoretical sense. It seems to me, and the other witness confirmed this, that it would be like tramp steamers on the oceans of the world: they would go to whatever principality or state had the most advantages. Haiti, I think, is one of the countries they use in water transportation. It was suggested that Florida was probably the state where all these companies would open a mailbox address—

Mr. Robert: I agree.

Mr. McGuigan: —and, in the end, you would not really accomplish anything.

Mr. Robert: No, but when you are desperate, you try to pull everything out of the hat.

Miss Roberts: Thank you very much for your presentation. It was very cogent. Even I understood it and I do not know that much about carriers. It is my understanding that private carriers are taking over a certain percentage of your particular business and that this is where competitiveness is coming from right now, that in fact, public carriers are really going down in the percentage of the market.

There is also competition from what I believe they call pseudo leasers and things like that, people who are not staying within the law. Really what you are saying is that you need protection because you are not able to compete now with the private companies which are coming in and everybody else. That is what you are basically saying.

Mr. Robert: Exactly.

Miss Roberts: What if we said to you, "Why do we not just deregulate it for anybody who is based in Canada, or anyone based in Ontario for intra-Ontario trucking?" Even that is not what you would like because that would open up the field. There are many people out there who have applied for licences for three to four to five years who cannot get them, for many reasons, not because they are not efficient and have financial responsibility, but because public convenience, the old test, cannot be shown. I assume what you are saying is that you want things to stay as they are because they are protecting you.

Mr. Robert: Yes. Well, not only me; I mean the trucking industries.

Miss Roberts: They are protecting you who are already in the industry, the people who are there.

The next thing I would like to know is, if we do deal with this particular act or an act similar to it and we think of reciprocity—as you call it or as it has been called by the Ontario Trucking Association—do we say to the United States or to this state or that state: "You cannot come. You cannot apply for a licence because you do not have what we think is an appropriate law within your own state. You will not let us in more easily than your next door neighbour"? Is that what you are asking for?

Mr. Robert: Yes.

Miss Roberts: If we say that, do you not think we are going to harm the business you have in New York right now, if New York truckers cannot come up here?

Mr. Robert: No.

Miss Roberts: It will not harm you at all there?

Mr. Robert: You see, we have two major problems, I hope you realize, with the United States. For example, what the United States is shipping into Canada, I want you to understand, is finished products, high technology

products and those kinds of commodities. So to start with, these products are very rarely moving in truckload quantities.

I could name for you probably two or three major carriers that have been able to have two, three, four or five terminals Stateside. What I am saying is take major companies, the largest, CP Transport. It would have maybe five, six or seven large terminals Stateside. They would be big terminals. Why? Because they have not been able to develop themselves. They do not have access to intra-United States movement.

Miss Roberts: That is not our fault, though.

Mr. Robert: We do not say it is your fault.

Miss Roberts: But it is nothing we can control.

Mr. Robert: Please let me finish and you will understand.

The type of market we address today is normally commodities that nobody wants to carry, peanuts coming from Alabama, cotton coming from Mississippi, scrap paper or sometimes a load of commodities that they ship in truckload quantities; for example, linoleum or products like that.

A US corporation has a division in Canada, but let's say there is a shortage of production. It will move it from Stateside. So that is usually what we, the carriers, are moving other than the automobile industry; you know, the automobile industry and other animals.

Once we look at the truckers or shippers from Stateside, most of the time they have nothing to say because once we pick up a load out there, it is going to be a full load that our Canadian customers would have specified we pick up. Because when these guys are shipping prepaid, do you think they use Canadian carriers? First of all, they do not know any of us. Why do they not know us? Because we are not there. The second thing is that we have these customers, these big US corporations shipping into Canada. They ship all over the US.

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Imagine, let's say, that I am based in Montreal or I am based in Toronto. The risk that one shipper—let's say it is Digitals, which is shipping electronic articles. What is the percentage of the total load that will come into Toronto versus the percentage that will go across the United States? Peanuts. So who do you think he is going to be dealing with? He is going to be dealing with a US carrier who can serve him throughout his networks all across the United States and will also be able to bring his peanuts into Toronto. And who is going to be that carrier? A large US carrier having a US network, which is Yellow Freight—these gentlemen have named it before—Roadway, CF and these people.

What do you think we, the Canadian carriers, are doing in that business? So there is aggravation that you would bring it up that maybe these US counterparts may be mad at us. They do not even know us.

Miss Roberts: No, not at you, at a government that says: "You can't come in. We aren't going to let you even..." Not at you; they do not care, but they care about us trying to stop them from—

Mr. Robert: No, it does not affect them. Realize that this is

intra-Canada movement. The US shippers were concerned at the time about free trade and about moving into Canada with Bill C-18 or Bill C-19. Okay? But what is this shipper's concern about intra-Ontario movement? He does not give a damn. He does not know what is going on in Canada anyway.

Miss Roberts: It does not make any difference then if we set the bill up as it is, because he is not interested in applying.

Mr. Robert: That is what I am saying. It has no interest for any US people. The US people have no interest, other than the US carriers that want to base and want to develop intra-Ontario base movements.

Miss Roberts: The concern is that you cannot get into their market.

Mr. Robert: Yes.

Miss Roberts: Okay, so this does not do anything at all to harm anybody, except you cannot get into their market.

Mr. Robert: That is right. We are asking you to help us out not to be caught in the middle of it; that is all.

Mr. Chairman: Mr. Robert, thank you very much for—

Mr. Morin-Strom: May I have a supplementary?

Mr. Chairman: As long as you like, Mr. Morin-Strom.

Mr. Morin-Strom: Miss Roberts is suggesting that no US carriers will be interested in the intra-Ontario market.

Mr. Robert: No.

Mr. Morin-Strom: As I understood it, you were talking about the big, major carriers, but for regional carriers in this area, I assume you are quite concerned about taking away business in terms of intra-Ontario.

Mr. Robert: Mr. Morin-Strom, if I were to précis my answer, I know what you are saying, but I was not talking about carriers; I was talking about Mr. Shipping World.

Sure the US carrier is interested, if he is large enough to get an intra-Canada and to get an organization coming into Canada. Let's say this guy is moving a load of glue going to Tembec in Timiskaming, right? He has to drive from Timiskaming back to Windsor or to Buffalo before he gets a load, unless he can convince the people from Timiskaming to get a load of pulp to go to the United States.

On that day, there is none. Usually, he was getting a load of pulp going to the United States. On that specific day there is nothing. The only load is going to Kimberly Clark, let's say, for example, in St. Catharines. So he is getting a load of pulp. But during that time, I am the carrier in Timiskaming which is normally taking all these loads out into St. Catharines. What the hell am I going to do with my drivers? Do I park them out?

Sure these guys are interested in our business. They are as interested in our business as we are in their business, but we know it is foolish to hope

to get the United States to deregulate its intrastate business. They will never do it.

I had an example given to me this morning of a carrier from Sault Ste. Marie that was delivering into Detroit going across Interstate 75 and he wanted to get return loads, but as you know, the largest cities are in Michigan. The only way he has been able to get it is to associate himself with a US carrier, buy the U.S. carrier and then transfer his licence. Otherwise, he would never have been able to move from Detroit back into Sault Ste. Marie or the northern part of Michigan. He has been forced to buy it. There was no way he could get a licence.

Miss Roberts: The concern now is that to be able to do that in the other state, they would have to meet the licence requirements of Michigan, right?

Mr. Robert: That is right, the same as the others, but we tell the others, "Do the same in Ontario as you would in Michigan," and we hope, the same in Quebec, but as you know, our situation has been reversed in Quebec and we, the carriers, are very disappointed at our minister. We had about 100 letters go to him, because he promised us in May full reciprocity, in that he will not act and make this bill firm until we have guaranteed reciprocity from the United States and from other provinces in Canada.

That bill has been adopted by (inaudible) on June 22, without anybody knowing about it. Once the trucking industry found out about it, it was too late. If you want to get the opinion of hundreds of truckers in Quebec, I could get you all kinds of letters, but it does not help our situation.

Even if a minister makes a mistake, who cares? He is probably going to be gone in four years' time, or maybe eight or 12, but we are still going to be there. We are not there for politics; we are there for survival. We are very concerned. We tell this guy, "Would you put your money into a trucking company today?" His answer is no, he prefers to put it with the caisses populaires.

Miss Roberts: I have one last comment. What you are indicating is that you want to have a continental transportation program, that everybody would be the same, that there would be no difference. You could have a network going all the way down to Mexico and back up and you would pay somewhere, in some magic place, X number of dollars for a licence and that licence would allow you to go anywhere. That is what would be heaven for the carriers.

Mr. Robert: That is not what I have been saying.

Miss Roberts: But is that what you are looking forward to?

Mr. Robert: No, it is only government which has been looking for deregulation. We, the carriers, have been asking for a protective environment.

Miss Roberts: Complete—okay.

Mr. Morin-Strom: That is what Miss Roberts wants.

Miss Roberts: It is not real protection.

Mr. Robert: What we mean by protection is that we want to have the proper tools to be able to maintain our share of the market and guarantee our survival. That is what we are concerned with. I see people who say, "No, we

don't want regulation." But when they make a survey of an imported product because they claim this product is coming at a price which is less than fair market value, what are they looking for? Protection.

We talk to the farmers and they want quotas on milk. What do they want? They want to prevent milk coming from across the border, to protect their environment.

All we are asking is to just protect our environment. We do not get any grants. We do not get billions or hundreds of millions in grants to survive. We have to fight and struggle for every dollar we put into our companies. We cannot say: "Our business is going sour. We'll go the government and we'll get a grant of \$500 million. That's fine. Everybody will pay for it."

We do not ask you for money. All we ask is that you help us out to survive in this environment. That is all we want.

Mr. McGuigan: Was it Lavalin Transport which got all the money?

Mr. Robert: Lavalin?

Mr. McGuigan: Did they not get a lot of money a few years ago?

Mr. Robert: Oh, Maislin. They got some special grants at the time and we know the success they had. A year after, it was all gone out the window.

Mr. Pouliot: We could be here for some time talking about Maislin.

Mr. Chairman: Are there any other questions or comments?

Mr. McGuinty: I hope Hansard will not confuse the statements that came from the different Roberts.

Mr. Chairman: Mr. Robert, thank you very much for your appearance before the committee.

Mr. Robert: Thank you very much.

Mr. Chairman: We appreciate it.

The last witness of the day is from the Canadian Brotherhood of Railway, Transport and General Workers, Mr. Stol. Welcome to the committee, Mr. Stol.

Mr. Stol: Thank you. I am very pleased to be here.

Mr. Chairman: This is Mr. Stol's brief, in blue.

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CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS

Mr. Stol: I will read from the brief. First, my name is Theo Stol, and I am regional vice-president of the Canadian Brotherhood of Railway, Transport and General Workers. This is representing what we call the Great Lakes region, which is most of Ontario.

On behalf of the members of the Canadian Brotherhood of Railway, Transport and General Workers, we will express our opposition to Bill 87 and Bill 88, primarily to Bill 88. Our union represents workers employed in all

phases of transportation, in road, water, air, rail and other services and industries. In Ontario, we have approximately 8,700 members, of whom many are in the trucking industry.

It was some time ago that our union, along with the Ontario Federation of Labour and the Canadian Labour Congress, stated that deregulation of the transportation industry, privatization of crown corporations and deregulation of the provincial trucking industry were all part of the free trade agreement between the United States and Canada. In other words, it was part of the free trade deal to deregulate, as was done in the United States some time ago.

All appearances are that all provinces are falling in line now, after the passing of Bill C-18, An Act respecting National Transportation, and Bill C-19, An Act respecting Motor Vehicle Transport by Extra Provincial Undertakings. It was immediately thereafter that the provinces were requested, or expected to get in line and commence to deregulate their trucking industry.

These bills, C-18 and C-19, have already resulted in adverse effects on employees and have not really given to the consumer what they promised to give. For example, over the past five years, the railways have laid off thousands of workers in preparation for deregulation. In the last set of negotiations, the major railway companies requested concessions. On the other hand, the unions demanded job security. Of course, everyone is aware that after a one-week strike in the railway industry, Bill C-85 legislated the workers back to work and a settlement was arbitrated.

I may say to you that the railways did get some of their concessions from the arbitrator, but the union certainly did not get full employment security.

It is certainly of interest to note that Canadian Pacific not too long ago, as a result of deregulation in the airline industry, sold CP Air. In so far as privatization is concerned, this is a continuing process by the federal government, such as the sale of Teleglobe and CN Hotels. I can say to you that right at the present time, Canadian National is being sliced into little pieces. They are selling off many parts of it, as you well know. At one time, there was CN Express and CN Trucking. They were sold to private enterprise and are now owned by Transport Route Canada.

Of all provinces to be the first to get in line, it had to be the Ontario government with its introduction of legislation deregulating the trucking industry, first by introducing Bill 150, Bill 151 and Bill 152, and I suppose to confuse people, this later became Bill 86, Bill 87 and Bill 88.

On the other hand, this same government pretends to be against the free trade agreement between the US and Canada, or perhaps that is only to assist the Ontario grape growers and to hell with the rest of the province's numerous Canadian trucking firms that employ some 100,000 or more employees, truckers, warehousemen and office staff.

Our main concern is Bill 88, which in our estimation will have a disastrous effect on our present Ontario trucking firms and the workers, and will not do anything for shippers in the long run. As we understand Bill 88, it will replace the Public Commercial Vehicles Act and provide for easier access to the industry by qualified applicants, since access or entry will no longer depend upon a test of public necessity and convenience, but will solely depend upon the fitness of the applicant, willing and able.

On June 20, 1988, second reading of Bill 88 was introduced by the

Honourable Mr. Fulton in volume 82 of Hansard, pages 4535-4536. Mr. Fulton, in part, stated the following:

"The results will be an industry which is more in tune with the demands of today's marketplace, an industry which will contribute to Ontario's economic competitiveness. Regulatory reform will stimulate increased innovation, flexibility and creativity in the trucking industry. Lower transportation costs, a wider range of service options for shippers and the potential for more local involvement in the trucking industry in all of Ontario and, in particular, in northern Ontario, where there are special needs, will be among the spinoff benefits of the new regulatory environment."

Mr. Fulton further stated: "It should be noted that Ontario is not acting in isolation in its efforts to reform trucking regulations. The federal government, along with many of the other provinces and territories, is also working towards establishing a new regulatory climate for commercial trucking."

This shows that the Ontario government is simply allowing the federal government to whip it into line with Bill C-18 and Bill C-19 and the present Bill C-130 dealing with the free trade agreement with the United States. This forms a part of the unwritten trade deal with the United States of America.

The reason we are saying it is closely tied to free trade is that it is Canadian shippers in the industrial sector who are lobbying for a deregulated trucking industry, thinking that such will reduce their transportation costs to meet the American transport costs in order to compete in preparation for a continental scramble for markets.

As was so adequately said by Karl Morin-Strom, MPP, Sault Ste. Marie, Transportation critic for the New Democratic Party, in volume 82 of Hansard—many of you have heard this already, but I just wanted to repeat it again—page 4536, second column, as follows, "The Mulroney-Reagan trade deal does not apply to transportation services, but this Bill 88, An Act to regulate Truck Transportation, sets out to deregulate the Ontario trucking industry and create a totally open market, particularly for those large, American-based carriers."

To quote again from a letter that was forwarded to Karl Morin-Strom, as is outlined in volume 82 of Hansard, page 4538: "This is from Denis Gratton Transportation Ltd. in Chelmsford, Ontario, adjacent to Sudbury: 'I am sending this letter in order to voice my opposition to Bill 88. We are a PCV carrier which hauls within the province of Ontario, and I am concerned about the way that Mr. Fulton is trying to railroad Bill 88 through the provincial Legislature. How can a government be so against a Canada-USA free trade agreement, yet be ready to free-trade our complete trucking industry to the USA markets?'"

How true that is. It is indeed a fact that it makes one wonder about the honesty and sincerity of the provincial government in its stand on the free trade deal.

It is our contention that the large American trucking firms such as Roadway Services, Yellow Freight System and Consolidated Freightways, will be able to swallow up the Canadian trucking industry within a short period of time. As was indicated by the Manitoba Trucking Association, "The largest US carrier with dozens of terminals can take over the Canadian market by the simple expedient of serving at cut point prices from the addition of maybe four distribution points."

Of course, within a short period of time, when these American trucking giants have settled in Ontario and have taken over the Canadian market, shippers will never see a noticeable reduction in freight rates. As a matter of fact, our prediction is that it will result in higher freight rates and less service, especially in less-populated areas such as northern Ontario. In this instance, Karl Morin-Strom stated:

"As one of northern Ontario's largest trucking firms put it in a letter in May 1988: 'Manitoulin Transport is not in favour of Bill 88, as we think it spells higher rates and poorer service to the majority of shippers and receivers in northern Ontario... It is our opinion that more competition will do two things: affect rates and services. Rates will increase to small towns and villages, and service will decrease.'"

Such increases in rates and decreases in services will result in existing industry in these small towns centralizing in larger cities and will discourage any future industry from settling in these small towns. It will simply stop growth in small towns in all of the province.

An extremely important question is, what will all of this do to the safety of our highways? The Ontario Trucking Association stated in its position paper: "There is a direct relationship between economic regulation and highway safety. Faced with increased competitive pressures and declining profitability, some carriers will be forced to give less-than-adequate consideration to those factors which ensure public safety."

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A Fortune US survey shows that truck insurance rates in the US have skyrocketed, with some carriers paying rate increases of 500 per cent or more. We can only assume that the reason for the high insurance rates is that vehicular maintenance was neglected and public safety compromised.

On several occasions, we have expressed our concerns to the various MPPs and the Premier of Ontario, David Peterson. In a letter dated December 2, 1987, to Premier Peterson, we in part stated the following:

"Consequently, if Ontario passes its own deregulation legislation before the free trade agreement comes into force, we would be granting easy access to operating rights within Ontario. Ontario carriers would not receive reciprocal treatment in the United States as 43 states are still highly regulated, thus barring Ontario companies from competing in intrastate markets."

Premier Peterson, in his reply dated February 3, 1988, in part stated the following: "Truck drivers will be allowed to operate in international service. They will not be permitted to make point-to-point moves within the foreign country; i.e., carriers, either US or Canadian, will continue to be required to utilize Canadian drivers for movements within Canada. This mirrors the situation which is now in effect in the employment and immigration rules of each country."

It should first be noted that the Premier is relying completely on the federal government not changing its present employment and immigration rules. Personally, I would not rely on anything, especially from a government that is prepared to give away the entire country to the United States, and of course I am referring to the free trade deal, Bill C-130.

Mr. McGuigan: On a point of order, Mr. Chairman: I think we are

really here to receive evidence, not a diatribe of compilations of editorials. I am getting a little sick of this presentation, because it does not address what we are here to do, and that is to argue about or consider the merits of this bill. This is just a compilation of various editorials, and some of them are downright insulting.

Mr. Chairman: I do think, though, we should give the witness the privilege of building his case as he sees fit.

Mr. McGuigan: I have leaped ahead and I cannot find anything ahead of here that has changed. I have been waiting to come to the conclusion, but I do not find any.

Mr. McGuinty: The honourable member had an analogy yesterday that I thought he could apply again.

Mr. Chairman: I do not understand that. Go ahead, Mr. Stol.

Mr. Stol: Thank you.

Mr. McGuinty: If a guy is going to commit suicide, do not murder him.

Mr. Stol: It appears that Premier Peterson is saying we should be satisfied because even if the Canadian trucking firms do not survive and are bought up or put out of business by US carriers, Canadian drivers will continue to be utilized, thus completely ignoring the fact that these large US carriers may operate with fewer terminals and operate their head offices out of the United States, resulting in the loss of a considerable number of jobs, as previously estimated by the Ontario Trucking Association, a loss of approximately 10,000 jobs.

As we have indicated previously, the existing trucking industry is highly competitive, and to allow large American carriers with huge financial bases into the marketplace will virtually wipe out many small- and medium-sized Ontario-based carriers, resulting in a serious loss of jobs in the industry. In our estimation, a lot more than 10,000 jobs will be lost if Bill 88 is adopted.

The 900-member Ontario Trucking Association so adequately stated the following: "Bill 88 is one-sided free trade favouring the Americans. Bill 88 would open the door to US truckers seeking Ontario intraprovincial truck operating rights while Ontario carriers will continue to be closed out of US intrastate trucking markets."

Jim McGuigan, MPP for Essex-Kent, in a letter dated May 16, 1988, in response to our letter dated December 2, 1987, stated in part the following: "It is unlikely that there will be a mass influx of US carriers into the intraprovincial Ontario trucking market, simply because the largest US operators are already established in Ontario. They include Roadway, Yellow Freight, Consolidated Freightways, St. Johnsbury and United Parcel Services. These companies have established Canadian subsidiary corporations."

Of course, the present legislation controls the truck operating licences to certain areas. Under Bill 88, however, the Ontario Highway Transport Board will not have the power to deny a licence even if the granting of that licence is found to be adverse to the public interest. The Ontario Trucking Association has on numerous occasions appealed to the Ontario government, the Minister of Transportation (Mr. Fulton), Premier Peterson and the various

MPPs, requesting that the present Bill 88 be amended to incorporate a reciprocity clause.

Such a reciprocity clause would be to ensure that only truckers from other provinces and states which provide equal opportunity to Ontario truckers will be able to take advantage of the easier-access provisions of the Ontario proposal; thereby, maintaining carriers from jurisdictions which have not deregulated would continue to come under the current Public Commercial Vehicles Act.

Apparently, the government is claiming that such a provision would be unconstitutional, while the Ontario Trucking Association lawyers seem to claim that such a clause would be constitutional. Under such circumstances, it would be our recommendation to shelve Bill 88 and maintain the present regulations.

In order to fully understand the disastrous effect of Bill 88 to the trucking industry and its employees, we want to highlight some of the comments which have been made by trucking firms in their constituencies as outlined by Karl Morin-Strom, MPP, Sault Ste. Marie, New Democratic Party Transportation critic in volume 82 of Hansard, pages 4537 and 4538. Mr. Chairman, I will bypass that, because you have heard it on many occasions, I assume. I will skip that and go to page 9, the second paragraph.

Many others listed have expressed their opposition to Bill 88, along with the 900-member Ontario Trucking Association. Experience of deregulation, as a result of the 1980 Motor Carriers Act in the United States, has been a disaster. Medium-sized companies were taken over by large companies; some 350 companies went out of business. In 1982, only 20 per cent of the members of the American Trucking Association made a profit, and in the same year there was a record number of bankruptcies.

Without a doubt, as a result of Bill 88 deregulating the trucking industry in Ontario, we will also find that the large US companies will take over medium-sized companies; a great number of companies will go bankrupt; and at the same time reduce public safety, resulting in a sharp increase in truck insurance.

As a result of Ontario trucking companies expanding their owner-operator capability, they are forcing workers to invest up to \$120,000 for a tractor to maintain a job. These employees already work long hours in order to meet their personal financial commitments. We are fearful that as a result of Bill 88, many will not be able to meet their financial commitments.

As previously indicated, Bill 88 will reduce jobs. It will further reduce wages and working conditions. All one has to do is look at the US. More than 100,000 jobs were lost as a result of deregulation and many others had their wages, benefits and working conditions rolled back. It simply became a form of union-busting.

It is beyond our understanding that this same Ontario government is pretending to be against free trade because of the threat to jobs, yet is proceeding with a piece of free trade legislation, namely Bill 88, deregulating the trucking industry.

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On behalf of the Canadian Brotherhood of Railway, Transport and General Workers in Ontario, we ask the government of Ontario to withdraw or shelve Bill 88 and maintain the present legislation for the following reasons:

1. The existing trucking industry in Ontario is highly competitive and to allow large American carriers into Ontario with huge financial bases will virtually wipe out many small- and medium-sized Ontario-based carriers, resulting in a serious loss of jobs in the industry.

2. All of the trucking companies represented by the Canadian Brotherhood of Railway, Transport and General Workers have expressed their opposition to Bill 88. If these employers are forced out of business, many of our members will be out of work. Many are located in communities already faced with high unemployment such as Windsor, London, Kitchener, Cambridge, Oshawa, Belleville, Hagersville, Woodstock, Dunnville and others. Of course, for them to seek work and relocate into Toronto is virtually impossible, since most cannot afford the high cost of housing and rental accommodation.

3. As previously indicated, Bill 88 will be a disaster for our owner-operators and their families, whereby they will lose their jobs and will not be able to afford to operate independently and at the same time pay off their high-cost tractors, truck insurance and repair costs. Such could result in bankruptcy and possible loss of their homes and private automobiles.

4. Under no circumstances should our members be expected to lower their standard of living because of the Ontario government allowing US-based companies to take over in this province, only in the long run to find out that they will lose their jobs anyway.

5. As our union has previously stated, after these giant US-based companies have taken over the industry and have placed thousands of truckers, dockmen and office staff out of work, prices will surely increase as there will be fewer carriers in the business and hence less competition.

6. It will not only eventually increase transportation costs, but in many locations, it will decrease services, discouraging growth, encouraging existing industry to centralize in large centres such as Toronto, where the average worker cannot afford to relocate.

7. It is not fair for the trucking companies that have established their businesses for many years. Neither is it fair for employees, after many years of service, to suddenly find themselves unemployed.

Thank you very much for having the patience to listen to me.

Mr. Chairman: Thank you for your presentation. I just have one question before we get into it for the members. How many workers do you represent in the trucking industry?

Mr. Stol: In Ontario?

Mr. Chairman: Yes.

Mr. Stol: I would say approximately 2,500 members.

Mr. Chairman: When you say you do not agree with the number of 10,000, that you think there will be more than that lost, you mean in Ontario, right?

Mr. Stol: That is correct.

Mr. Chairman: Have you got a number that is more accurate in your mind?

Mr. Stol: How many would lose their jobs out of the 2,500?

Mr. Chairman: No. You say in the brief that the Ontario Trucking Association estimates there will be 10,000 jobs lost. Do you think it will be more?

Mr. Stol: I feel it would be more in the neighbourhood of maybe 15,000 or 20,000 who could lose their jobs.

Mr. Chairman: Do the Teamsters represent most of the balance of the unionized workers in trucking?

Mr. Stol: No. The Canadian Brotherhood of Railway, Transport and General Workers and the Teamsters are the two main transportation unions in Ontario.

Miss Roberts: You answered one question that I had, but I also have another comment. You indicate you represent 2,500 people employed directly in the trucking industry. How many railway workers do you represent?

Mr. Stol: Approximately the same, 2,500.

Miss Roberts: Is it because of your experience with respect to deregulation of the railways, because deregulation of the railways has been so difficult, you expect trucking to be the same?

Mr. Stol: That is correct.

Miss Roberts: That is what you are basing all this on?

Mr. Stol: That is correct.

Miss Roberts: You have indicated there have been a lot of problems in the United States as a result of deregulation.

Mr. Stol: That is right.

Miss Roberts: That was in the early 1980s, right, 1981, 1982?

Mr. Stol: That is correct.

Miss Roberts: While there was a recession going on as well. Do you have any particular studies or any information from your union or from other unions that would indicate that it was as a result of deregulation that the number of jobs—you indicated 100,000—were lost, or was it a result of the recession or as a result of something else?

Mr. Stol: It is our understanding that it was as a result of deregulation. Also, of course, it must be noted that besides the loss of jobs was the rollback in wages and benefits that people had fought for for many years.

Miss Roberts: This was all in the trucking industry? There was no other industry involved in that 100,000?

Mr. Stol: That was in the trucking industry. That is the truckers and the office staff.

Miss Roberts: So 100,000 people lost their jobs because of deregulation and for no other reason.

Mr. Stol: That is my understanding.

Miss Roberts: That is information you have received either from the American government—I assume it is a study from the American government—or from unions.

Mr. Stol: It was received from both.

Miss Roberts: Might I ask that we have that information. I assume it is available, if it is available to the union, that we could have that type of information if it is available.

Ms. Kelch: I would like to see the specific study because I am not aware of it.

Miss Roberts: So you do not have it.

Ms. Kelch: No.

Miss Roberts: My other question that deals with this, is you have indicated that you think there will be at least 15,000 people lose their jobs in the trucking industry here, as a result of this. That will be because of a massive US takeover.

Mr. Stol: That is correct.

Miss Robert: Okay. So you expect that any change that is coming is going to be from the US, any new companies coming in are going to be from the US and not from other Canadian provinces or from Ontario itself?

Mr. Stol: I think the Ontario trucking industry is going to be faced initially by a lot of independents popping up all over the place who will buy a truck and get their licence and then try that out. Over and above that, the large US companies will come in here and simply cut the rates so low that the Canadian trucking companies will simply not be able to operate on that basis. As a result of that, they will go bankrupt and at a later time, these companies will simply gobble up the independents that have popped up in the meantime.

They are going to be faced with all of that. At the present time, this is controlled.

Miss Roberts: The big US companies that are already in here have not been able to do that.

Mr. Stol: No, because their licences are restricted under the present legislation.

Ms. Kelch: Could I offer a further point of clarification, as well, in terms of perhaps some of the figures that Mr. Stol is referring to. The material that we have available to us in fact did indicate that bankruptcies did increase in the United States after deregulation of the trucking industry. However, and the Royal Bank report of 1985 confirmed this, our information indicates that due the recession but equally as important due to high interest rates, those were very large contributing factors rather than just deregulation on its own.

As well, in 1987, the Department of Transportation in the United States found that in fact it was less than one per cent of all of the carriers that were regulated by the Interstate Commerce Commission that did fail in the four years following deregulation, 1980 to 1984.

Mr. Stol: I suppose everyone is looking for their own little arguments. All I am saying to you is that those same workers—let's talk about the workers—were faced with rollbacks in wages and benefits. They are still suffering from that today.

Miss Roberts: As are all the Ford people right now and all the other auto industry people who gave up so much because of the recession and high interest rates.

Mr. Pouliot: Before I get to some questions to Brother Stol, I appreciate the renewed interest or sudden interest, actually, in every little detail, and to qualify that it was not this and that. We had some predecessors with the same questions that were very concise and clear; the same questions were not asked of them. I have heard the tone before.

From the experience in the United States, with deregulation, are you aware that some 350 carriers went out of business? This is a fact. The Department of Commerce will attest to that in the States. It is not a secret guarded by anyone. You are aware of that?

Mr. Stol: Yes.

Mr. Pouliot: Do you see a similar effect taking place with the Ontario workers?

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Mr. Stol: Absolutely.

Mr. Pouliot: Good. Are you also aware with takeovers and mergers many local brothers just disappeared and were replaced by nonunion personnel?

Mr. Stol: That is right.

Mr. Pouliot: With lower wages?

Mr. Stol: That is right.

Mr. Pouliot: They ended up working longer hours. Those are not dreams in technicolour in Disneyland. Those are real facts.

Mr. Stol: Yes.

Mr. Pouliot: Okay. What has been your experience? You deal with the railroad workers I understand, Brother?

Mr. Stol: Our experience with deregulation of Bill C-18 and Bill C-19 is it is an absolute disaster as you well know. The railways are abandoning their branch lines, either abandoning them altogether or perhaps selling them off and as a result of that, again of course, there is a tremendous loss of jobs. As a matter of fact, CN within the next six months has forecast they will be laying off another 630 people across the system. It is ongoing. As a matter of fact, and I may be the first one to say this, I

suppose if the present government in power federally remains in power I will see that perhaps in the very near future we will have one railway instead of the two railways that we have now. Canadian National is always a company that was there or was supposed to be there to serve the public and serve people in isolated and small communities. I even see that disappearing because of the fact that deregulation has been initiated at the federal level.

I see the same thing happening here. Companies, once they have taken over, will only operate where they want to operate and where there is a good market and what is going to happen as a result of that is industries cannot survive in places such as Lindsay and Peterborough. They will simply relocate into larger centres where adequate transportation is available. The Ontario Highway Transport Board in the past has done an excellent job in forcing people who received a licence to also operate into communities that are in need of that transportation despite the fact that maybe there was not too much profit in serving those communities.

Mr. Pouliot: Thank you Brother Stol. Thank you, Mr. Chairman.

Mr. Chairman: Any other questions of Mr. Stol? If not, thank you very much Mr. Stol for your passionate presentation to the committee. We do appreciate your presence here.

Mr. Stol: Thank you sir.

Mr. Chairman: As members who are still here will appreciate, on Monday we go to Windsor. I think everyone has their tickets and so forth. We travel Monday afternoon and the hearing is on Tuesday morning. Anything else? We are adjourned until Tuesday morning.

The committee adjourned at 4:53 p.m.

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